Heard by assignment Oct 27. 1-7/3 Jan Dany

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 571.

THE UNITED STATES, APPELLANTS,

vs.

THE UNION PACIFIC RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 4, 1875.

Affirmed Judg Davis



SUPREME COURT OF THE UNITED STATES.

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THE UNION PACIFIC RAILROAD COMPANY.

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INDEX.

	Original.	Print.
Petition	1	1
Traverse	62	40
Answer and set-off	63	41
Stipulation of counsel	64	41
Final judgment by the court	66	42
Application by defendants for allowance of appeal	67	42
Order allowing same	67	42
Findings of fact by the court, and conclusions of law thereon	67	42
Copy of bond referred to in said findings	70	44
Request by claimant for additional finding, and order thereon	71	44
Opinion of the court	73	45
Certificate	79	50



1 United States Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY
against
THE UNITED STATES. } No. 9830.

Petition.—Filed July 30, 1874.

To the honorable the judges of the Court of Claims:

Your petitioner, the Union Pacific Railroad Company, respectfully represents—

That it is a corporation duly organized under the laws of the United States.

That in and by an act of Congress of the United States, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the several acts amendatory thereof, approved July 2, 1864, March 3, 1865, and July 3, 1866, certain rights, powers, donations, grants of land and bonds, rights of way, privileges, and franchises were given and granted to the said Union Pacific Railroad Company, for the purpose of aiding said company in the construction of its railroad and telegraph line, and that the said acts were duly accepted, and its said railroad and telegraph line were duly constructed in conformity therewith by your petitioner.

That under and in pursuance of said acts of Congress, United States bonds, payable in thirty years from their date, bearing interest at 6 per cent. per annum, payable by the Government semi-annually, in lawful money of the United States, were issued in aid of the construction of said railroad, to the amount of $27,236,512.

2 That the grants aforesaid were made upon condition that said company should pay said bonds at maturity, and should keep said railroad and telegraph line in repair and use, and should at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any Department thereof, and that the Government should at all times have the preference in the use of the same for all the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, and that one-half of the compensation for services rendered for the Government by said company should be applied to the payment of the bonds issued by the Government in aid of the construction of said railroad, as by reference to said acts of Congress will more fully and at large appear.

That your petitioner has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

Your petitioner further states, that at various times since the bonds of the United States were issued in aid of the construction of its road as aforesaid, your petitioner has performed service for the Government of the United States, at the request of, and whenever required to do so by, the respective Departments thereof, in the transmission of despatches over its telegraph line, and in the carriage and transportation of the mail, troops, munitions of war, supplies, and public stores upon its

railroad; that such service was rendered, in some instances, at prices and rates agreed upon at the time between your petitioner and the various Departments of the Government requiring the services, and in all cases the service was actually rendered by your petitioner on the requisition of the Government; that when no special agreement as to prices was made at the time of the service, the prices charged for the same were fair and reasonable rates of compensation, and do not exceed the amounts that were charged to and paid by private parties for the same kind of service at the same date, being the prices established by the regular tariff of your petitioner issued and in force at said dates.

3 That among the services thus rendered by your petitioner as aforesaid to the Government of the United States are the following services rendered in the carriage and transportation of the mails of the United States for the Post-Office Department over the railroad of your petitioner, and the prices fixed therefor by said Post-Office Department, as will appear by Exhibit 50, hereto annexed, and the times when they were rendered, which services and prices have been examined, passed upon, and found to be correct, and have been so certified and vouched, and so notified to your petitioner, by the proper officers of the Post-Office Department, namely:

For the carriage of said mails on route No. 17401, between Omaha and Ogden, for the quarter ending March 31st, 1873	$70,963 75
For the carriage of said mails over the same route for the quarter ending June 30th, 1873	70,963 75
For the carriage of said mails over the same route for the quarter ending September 30th, 1873	81,285 75
For the carriage of said mails over the same route for the quarter ending December 31st, 1873	81,285 75
For the carriage of said mails over the same route for the quarter ending March 31st, 1874	81,285 75
	$385,784 75

That the Government is entitled to the following credits on account of said mail-service, to be deducted from the half part thereof, payable to your petitioner, as hereinafter stated, to wit:

Collections received by your petitioner from local post-offices on said route, February 19th, 1873	$3,889 07
June 10th, 1873	3,135 00
June 30th, 1873	776 90
Fare collected of special agent of P. O. Department, J. B. Underwood, Dec. 6th, 1873	15 05
	$7,816 02

That among the services thus rendered to the Government of the United States by your petitioner as aforesaid are services here-
4 inafter specified, rendered in the carriage and transportation of troops, munitions of war, supplies, and public stores over the railroad of your petitioner, upon the requisition of and for the Quartermaster's Department and other Departments of the United States Government, for which services bills have been rendered by your petitioner to the proper Departments of the Government, and the same have been adjusted, passed upon, and allowed by the accounting officers of the Government, amounting in all to $658,534.55; and that the said amount, thus allowed, has been earned by your petitioner, and is due your petitioner from the United States for said services, and should be accounted

for and paid over as hereinafter alleged; and your petitioner hereto annexes a schedule, marked "A," which he prays may be taken as part of this petition, showing the several amounts of the bills thus rendered, which have been passed upon and allowed by the accounting officers of the Government, the several dates when your petitioner was notified of the adjustment and allowance of each amount, and the Departments of the Government from which such notifications to your petitioner were sent; and your petitioner also hereto annexes exhibits, from 1 to 49, showing a tabular statement of the bills for services thus rendered by your petitioner, and of the periods when said services were rendered by your petitioner, and of the amounts due your petitioner thereon as properly adjusted and settled as aforesaid, which exhibits were sent to your petitioner from the Quartermaster-General's Office and other Departments of the United States at the respective dates stated in said Schedule A; and your petitioner further says that said bills and the evidence in support of the same, and the aforesaid claims for mail-service, and the evidence that they have been properly adjusted, passed upon, and allowed, are on file in the Treasury Department or other Departments of the Government, as your petitioner believes, and your petitioner prays that said evidence may be produced by the officers of the Treasury or other Departments and exhibited to this court.

That all of said services rendered by your petitioner, the amounts of which are stated on said Schedule A, were rendered between the periods of February, 1871, and February, 1874, inclusive.

That under and in pursuance of the fifth section of the act of Congress approved July 2d, 1864, amending the act of Congress of July 1st, 1862, above referred to, one-half of the amount due to your petitioner for the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores for the United States Government over the railroad of your petitioner was to be applied to the payment of the bonds issued by the Government in aid of the construction of said road, and that the remaining half of said amount was to be paid to your petitioner; and in all former settlements for these services performed by your petitioner on said railroad, the United States Government has recognized this division, and has applied one-half of the amount accrued for such other services on its railroad to the account of the bonds issued in aid of said road, and paid the other half to your petitioner.

That one-half of said sum of $385,784.75 so earned by your petitioner for the carriage of mails as aforesaid, to wit, $192,892.38, should be applied by the Government of the United States to the payment of the bonds issued by the Government in aid of the construction of the railroad of your petitioner, and the other half of said sum, less the said amount of $7,816.02, credited to the Postal Department as aforesaid, namely, the sum of $185,076.35, should be paid over to your petitioner, and the same is now due to your petitioner and remains unpaid by the Government.

That one-half of said sum of $658,534.55 so earned by your petitioner for the carriage and transportation of troops, munitions of war, supplies, and public stores as aforesaid, to wit, $892,267.28, should be applied by the Government of the United States to the payment of the bonds issued by the Government in aid of the construction of the railroad of your petitioner, and the other half of said sum, namely, $329,267.27, should be paid over to your petitioner, and the same is now due to your petitioner and remains unpaid by the Government.

That your petitioner alone is the owner of said claims, and the consid-

eration therefor was the service performed by your petitioner, as above stated.

That the Secretary of the Treasury of the United States refuses to pay to your petitioner the said claims so allowed and due, and payable to your petitioner as aforesaid, but withholds the payment thereof, alleging, as your petitioner is informed and believes, as a reason for
6 such refusal, that he is required so to do, and that your petitioner is not entitled to the payment thereof from the United States under and by virtue of the second section of the act of Congress approved March 3d, 1873, 17 U. S. Statutes at Large, p. 508, which section is as follows:

"SECT. 2. That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been re-imbursed, together with the five per cent. of net earnings due and unapplied, as provided by law; and any such company may bring suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them, and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business."

That the Postmaster-General of the United States refuses to pay to your petitioner the said claims so allowed, and which are now due and payable to your petitioner for the mail-service as aforesaid, but withholds the payment thereof, alleging, as your petitioner is informed and believes, as a rea-on for such refusal that he is required so to do, and that your petitioner is not entitled to the payment thereof under and by virtue of said second section of the act of Congress last referred to.

Your petitioner respectfully claims and submits to this court that by the act of Congress approved July 1, 1862, and particularly the 5th and 6th sections thereof, as amended by the act of July 2d, 1864, and particularly by the 5th and 10th sections thereof, and the acts of March 3d, 1865, and July 3d, 1866, the United States Government entered into a contract with your petitioner to issue to your petitioner United States bonds payable in thirty years, bearing interest at 6 per cent. per annum, payable semi-annually, as therein provided, and to subordinate the lien of said bonds to the lien of the first-mortgage bonds authorized by said acts to be issued by your petitioner; and in consideration of your petitioner keeping its railroad and telegraph line in repair and use,
7 and transmitting dispatches over said telegraph line, and transporting mails, troops, munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any Department thereof, and giving the Government at all times the preference in the use of the same for all the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, the said Government by said acts of Congress contracted and agreed that one-half of the compensation for services rendered for the Government by your petitioner should be applied to the payment of the bonds issued by the Government in aid of the construction of said road, and that the other half part thereof should be paid to your petitioner.

And your petitioner respectfully claims and insists that the part of

the 2d section of the act of Congress of March 3d, 1873, above recited and relied upon by the Secretary of the Treasury in refusing payment of the claims of your petitioner, which directs the Secretary of the Treasury to "withhold all payments to any railroad company and its assigns, on account of freights and transportations over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been re-imbursed, together with the five per cent. net earnings due and unapplied, as provided by law," was intended to authorize said Secretary to withhold payments for serv ces performed by your petitioner on its said road, aided by the issue of Government bonds, only in order that and until the rights of your petitioner to payment for such services should be determined by the courts, and does not bar and was not intended to bar the claims of your petitioner in the premises; and further, that said section did not confer and was not intended to confer any authority whatever upon said Secretary to withhold payments for services performed by your petitioner upon its said railroad prior to the passage of said last-named act of Congress, but the same should be paid in conformity to the provisions of said fifth section of the act of July 2d, 1864, and of the ninth section of the act of Congress approved March 3d, 1871, 16 U. S. Statute' at Large, p. 525.

Your petitioner, therefore, by coming into this court as authorized by said section, bringing suit for the recovery of the claims above-
8 mentioned, does not waive its right to claim payment of one-half of the amount earned as aforesaid on its said railroad, but, on the contrary, your petitioner brings this suit expressly to recover said amounts.

Your petitioner therefore respectfully prays that this honorable court will render judgment in favor of your petitioner and against the United States as follows, to wit:

First. That the United States pay to your petitioner one-half part of the amount of the claim of your petitioner for the carriage of the mails over the road of your petitioner, less the amount carried to the credit thereof, as hereinbefore stated, amounting to $185,076.35.

Second. That the United States give to your petitioner credit on account of Government bonds for the remaining one-half part of the claim of your petitioner for said mail service, as hereinbefore stated, amounting to $192,892.38.

Third. That the United States pay to your petitioner one-half part of the amount of the claim of your petitioner for the transportation of passengers and freight over its railroad, as hereinbefore stated, amounting to $329,267.27.

Fourth. That the United States give to your petitioner credit on account of Government bonds for the remaining one-half part of its amount of the claim for the transportation of passengers and freight over its railroad, as hereinbefore stated, amounting to $329,267.27.

Your petitioner prays for such other and further relief in the premises as may be equitable and just, and will ever pray, &c.

UNION PACIFIC RAILROAD COMPANY,
Petitioner.
By ELISHA ATKINS,
Vice-President.

THAXTER & BARTLETT,
Attorneys for Petitioner.
S. BARTLETT,
Of Counsel.

9, 10 STATE OF MASSACHUSETTS,
District of Massachusetts, ss :

Elisha Atkins, of the city of Boston, and State aforesaid, being duly sworn, deposeth and saith, that he is the vice-president of the Union Pacific Railroad Company, the petitioner in the foregoing petition named; that no assignment or transfer of the claims set forth in said petition, or any part thereof or any interest therein, has been made at any time; that said petitioner is justly entitled to the amounts in said petition claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true; and further deponent saith not.

ELISHA ATKINS.

Sworn to before me this twenty-second day of July, A. D. 1874.
WINSLOW WARREN,
Commr. of U. S. Circuit Ct. for District of Mass.

Post-office address of claimant: Union Pacific Railroad Company, Sears' building, Boston, Massachusetts; Elisha Atkins, vice-president, 97 State street, Boston, Massachusetts.

Post-office address of claimants' attorneys: Thaxter & Bartlett, 13 Exchange street, Boston, Massachusetts.

11 SCHEDULE A.

No. of Ex. annexed.	Date.	Auditing Offices.	Amount.
	1873.		
No. 1.	Jan. 31,	Quartermaster General's Office, (Transportation Branch)	$21,914 71
2.	Feb. 18,	do do	3,614 29
3.	21,	do do	1,082 13
4.	Mar. 1,	do do	11,316 28
5.	25,	do do	10,785 94
6.	Apr. 3,	do do	373 63
7.	4,	do do	14,992 34
8.	8,	do do	172 40
9.	12,	Treasury Department, Second Auditor's Office	31 09
10.	18,	Quartermaster-General's Office, (Transportation Branch)	24,961 21
11.	June 11,	do do	59,379 34
12.	18,	do do	93,987 33
13.	21,	do do	14,079 30
14.	July 11,	do do	4,809 92
15.	2,	do do	7,043 41
16.	18,	do do	15,808 82
17.	25,	do do	482 05
18.	31,	do do	20,924 53
19.	Aug. 21,	do do	35 78
20.	Sept. 5,	do do	1,025 73
21.	11,	do do	41,966 60
22.	12,	do do	27 00
23.	26,	do do	17,433 83
24.	Oct. 7,	do do	741 25
25.	25,	do do	14,762 55
26.	29,	do do	1,456 31
27.	Nov. 6,	do do	36,145 70
28.	8,	do do	12,110 73
29.	14,	do do	4,356 43
30.	19,	do do	12,387 54
31.	22,	do do	50,234 42
32.	20,	do do	123 67
33.	Dec. 1,	do do	1,441 80
34.	16,	do do	180 93
	1874.		
35.	Jan. 7,	Treasury Department, Second Auditor's Office	124 78
36.	13,	Quartermaster-General's Office, (Transportation Branch)	602 40
37.	16,	do do	1,713 06
38.	21,	do do	11,509 06
39.	Feb. 6,	do do	4,109 16
40.	Mar. 24,	do do	68,421 17
		Amount forward	$586,668 55

SCHEDULE A—Continued.

No. of Ex. annexed.		Date.	Auditing Offices.	Amount.
		1874.	Amount forward	$586,6 8 55
12	41.	Apr. 2,	Department of the Interior, Office of Indian Affairs	11 02
	42.	10	Treasury Department	2,064 00
	43.	15,	Department of the Interior, Office of Indian Affairs	435 60
	44.	21,	Quartermaster-General's Office, (Transportation Branch)	127 41
	45.	May 4,	....do....do	21,433 80
	46.	5,	....do....do	7,180 53
	47.	7	....do....do	26,042 57
	48.	12,	....do....do	1,548 00
	49.	4,	Department of the Interior, Office of Indian Affairs	13,021 07
				$658,5 4 55

13 B.]

EXHIBIT 1.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., January 31, 1873.

To Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Five (5) accounts of your company for the transportation of troops and military stores and for expressage, in February, 1871, to November, (inclu.,) 1872, transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., December 24, 1872, amounting, as rendered, to twenty-one thousand nine hundred and thirteen dollars and seventy-seven cents ($21,913.77,) have been examined and corrected as per annexed recapitulation, to twenty-one thousand nine hundred and fourteen dollars and seventy-one cents ($21,914.71,) and referred to the Third Auditor Treasury Department, for settlement.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Additions.	Corrected amount.
			1872.			
12	980	Troops	Aug., Sept.	$17,608 20	.....	$17,608 20
"	981	Stores	Mar., Apr., May.	1,621 77	.94	1,622 71
"	982	"	May.	210 60	.....	210 60
			1871. 1872.			
"	983	"	Feb., Mar., Apr.	1,993 65	.....	1,993 65
			1872.			
"	984	Expr's'ge	June, Nov.	479 55	.....	479 55
				$21,913 77	.94	$21,914 71

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

12, (Q. M. G. O.,) 1873.

14 B.]

EXHIBIT 2.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., February 18, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass. :

SIR: Eight (8) accounts of your company for the transportation of military stores in December, 1871, to May, (inclu.,) 1872, transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., July 27, Nov. 1, Dec. 4 and 14th, 1872, amounting, as rendered, to three thousand six hundred and fifty-four dollars and five cents ($3,654.05,) have been examined and corrected, as per annexed recapitulation, to three thousand six hundred and fourteen dollars and twenty-nine cents ($3,614.29,) and referred to the Third Auditor, Treasury Department, for settlement.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Correc'ed amount.
			1871.			
1,113	945	Freight	December.	$1 46	.....	$1 46
1,498	958	"	"	8 26	$1 62	6 64
"	959	"	"	721 83	1 45	720 38
"	960	"	"	4 57	.....	4 57
			1871. 1872.			
"	961	"	Dec., Jan., Feb.	721 51	1 25	720 26
1,649	973	"	Mar., Apr.	1,710 37	35 44	1,674 93
1,696	978	"	May.	483 36	.....	483 36
"	979	"	"	2 69	.....	2 69
				$3,654 05	$39 76	$3,614 29

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1113, 1498, 1649, 1696, (Q. M. G. O.,) 1872.

15 B.] EXHIBIT 3.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., February 21, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass. :

SIR: Two (2) accounts of your company for the transportation of military stores in May, 1872, transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., December 31, 1872, amounting, as

rendered, to one thousand and eighty-two dollars and seventeen cents, ($1,082.17,) have been examined and corrected, as per annexed recapitulation, to one thousand and eighty-two dollars and thirteen cents, ($1,082.13,) and referred to the Third Auditor Treasury Department, for settlement.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
17	985	Stores.....	1872. May.	$1,079 49	.04	$1,079 45
"	986	"	"	2 68	.....	2 68
				$1,082 17	.04	$1,082 13

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

17, (Q. M. G. O.,) 1873.

16 B.] EXHIBIT 4.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., March 1st, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company for the transportation of troops and military stores in November, 1871, to August, 1872, (inclu.,) transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., Jan. 3 and 15, 1873, amounting, as rendered, to eleven thousand two hundred and six dollars and thirty-two cents, ($11,206.32,) have been examined and corrected, as per annexed recapitulation, to eleven thousand three hundred and sixteen dollars and twenty-eight cents, ($11,316.28,) and referred to the Third Auditor Treasury Department, for settlement.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
52	987	Stores	1871. 1872. Nov., Feb	$2,114 31	$148 91	$38 95	$2,224 27
"	988	"	1871. December.	43 96	.....	.....	43 96
121	989	Troops	1872. July, Aug.	9,048 05	.....	.....	9,048 05
				$11,206 35	$148 91	$38 95	$11,316 28

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

52121, (Q. M. G. O.,) 1873.

17 B.] EXHIBIT 5.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., March 25th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Four (4) accounts of your company for the transportation of troops and military stores in December, 1871, to July (inclu.,) 1872, transmitted by Major A. J. Perry, chief qu. m'r Dept. Platte, Omaha, Neb., November 15, 1872, amounting, as rendered, to ten thousand eight hundred and eighty-one dollars and fifty-one cents, ($10,881.51,) have been examined and corrected, as per annexed recapitulation, to ten thousand seven hundred and eighty-five dollars and ninety-four cents, ($10,785.94,) and referred to the Third Auditor Treasury Department, for settlement.

Reg. No.	No. acct.	Trans.	Date.	Original. amount.	Add.	Deduct.	Corrected. amount.
			1872.				
1590	968	Stores	March.	$25 69	.....	.....	$25 69
"	969	"	Jan., Feb.	81 72	10	$6 49	75 33
* "	970	Troops	June, July.	5,989 70	.....	31 00	5,958 70
			1871—1872.				
"	971	Stores	D'c., F'b., M'r	4,784 40	1 00	59 18	4,726 22
				$10,881 51	$1 10	$96 67	$10,785 94

* From account (No. 970) for $5,989.70, one man, (subvou. No. 88602,) insane, has been withdrawn by order of the Secretary of War, and transmitted to the Secretary of War for reference to the *Second* Auditor for payment from "Army contingencies."

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1590, (Q. M. G. O.,) 1872.

18 B.] EXHIBIT 6.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., April 3rd, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: An account of your company for the transportation of military and naval stores in December, 1871, transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., July 27, 1871, amounting, as rendered, to three hundred and eighty-six dollars and sixty cents ($386.60,) has been examined and corrected by withdrawal of the amount charged for transportation of naval stores, $326.80 cents, to fifty-nine dollars and eighty cents, ($59.80,) and referred to the Third Auditor,

Treasury Department, payment to be withheld as required by act of March 3, 1873.

In the adjustment of the amount withdrawn, $326.80, a supplemental account has been made up in this office, and upon examination, and in conformity with letter of the general freight-agent of the company, reduced by deduction for overcharge in rate on 9,975 pounds, to three hundred and thirteen dollars and eighty-three cents, ($313.83,) and forwarded to the Secretary of War, for transmittal to the Secretary of the Navy, for settlement by the Fourth Auditor of the Treasury.

Reg. No.	No. acct.	Cl.—Fol.		Trans.	Date.	Original amount.	Deduc. tion.	Corrected amount.
1113	944	171	124	Stores.	1871. Dec.	$386 60	$12 97	$59 80 } Third Aud. 313 83 } Fourth Aud.
						$386 60	$12 97	$373 63

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1113, (Q. M. G. O., 1872)

19 B.]

EXHIBIT 7.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., April 4th, 1873.

To Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company for the transportation of troops and military stores in March to September, (incl.,) 1872, transmitted by Major A. J. Perry, C. Q. M. Dept. Platte, Omaha, Neb., January 23, 1873, amounting as rendered, to fifteen thousand dollars and twenty-three cents, (15,000.23,) have been examined and corrected as per annexed recapitulation, to fourteen thousand nine hundred and ninety-two dollars and thirty-four cents (14,992.34) and referred to the Third Auditor Treasury Department. Payment to be withheld as required by act of Congress of Mch. 3, 1873.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
			1872.				
213	993	Troops.....	Aug., Sept.	9,935 50	.....	.....	9,935 50
"	994	Stores.....	Mch., July	4,690 38	.....	8 15	4,682 23
"	995	"	June.	374 35	26	.....	374 61
				$15,000 23	26	8 15	$14,992 34

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

213, (Q. M. G. O.,) 1873.

20 B] EXHIBIT 8.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., April 8th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass. :

SIR: Four (4) accounts of your company for the transportation of military stores, Omaha Bridge transfer, in April to June, (inclu.,) 1872; transmitted by Capt. James Gillis, A. Q. M., Chicago, Ill., Aug. 10th and 12th, and Oct. 8th, 1872, amounting, as rendered, to one hundred and eighty-one dollars and sixty-eight cents, ($181.68,) have been examined and corrected as per annexed recapitulation to one hundred and seventy-two dollars and forty cents, (172.40,) and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
			1872.			
1152	946	Stores.....	May.	35 74	9 28	26 46
1166	1004	"	Apl., May.	1 44	.....	1 44
1390	1005	"	" "	138 83	.....	138 83
1390	1006	"	May, June.	5 67	.....	5 67
				$181 68	9 28	172 40

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1152, 1166, 1390, (Q. M. G. O.,) 1872.

21 J. M. S.]

EXHIBIT 9.

[All official letters to this Office must be addressed to the "Second Auditor of the Treasury," and in replying to letters from this Office the initials on the upper left-hand corner should be referred to.]

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
April 12, 1873.

SIR: The account of the Union Pacific R. R. Co. for transportation furnished Geo. H. Parker, late private Co. "C," 3d U. S. Ca'ry, from Cheyenne, W. T., to Omaha, Neb., as per copy of transportation-order, Series F, No. 88602, issued at Cheyenne, W. T., July 15, 1873; approved by the acting Secretary of War, Apl. 1, 1873, for $31, has been settled this day and confirmed by the Second Comptroller.

A requisition will issue in favor of the company to go to its credit on

the books of the Register of the Treasury for the amount above named, as per act, Mch. 3, 1873, section 2.

Respectfully,

E. B. FRENCH, *Auditor.*
By J. M. S.

Hon. E. H. ROLLINS,
Treasr. Union Pacific R. R. Co. P. O. Box, 3377, Boston, Mass.

W. A. M. 82.

22 B.] EXHIBIT 10.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., April 18th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company for the transportation of troops and military stores in April to November inclusive, 1872, transmitted by Major A. J. Perry, chf. qu'm. Dept. Platte, Omaha, Neb., January 10th, 1873, amounting, as rendered, to twenty-four thousand and eight hundred dollars and nine cents, ($24,800.09,) have been examined and corrected, as per annexed recapitulation, to twenty-four thousand nine hundred and sixty-one dollars and twenty-one cents, ($24.961.21,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress approved March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Cl.—Fol.		Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
					1872.				
126	990	171	195	Stores...	Apl., July.	5,939 38	310 80	94 48	6,155 70
"	991	"	199	" ..	June, July.	11,721 51	.....	55 20	11,666 31
"	992	"	205	Troops ..	Sept., Nov.	7,139 20	.....	.....	7,139 20
						$24,800 09	310 80	149 68	24,961 21

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

126, (Q. M. G. O.,) 1873.

23 B.] EXHIBIT 11.

[Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., June 11th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Five accounts and one extract account of your company for the

transportation of troops and military and naval stores in May, 1871, to November, 1872, inclu., transmitted by Maj. A. J. Perry, chief quartermaster Dept. Platte, Nov. 15, 1872, and February 12th, 1873, amounting as rendered to fifty-nine thousand three hundred and two dollars and fifteen cents, ($59,302.15,) have been examined and corrected, as per annexed recapitulation, to fifty-nine thousand three hundred and seventy-nine dollars and thirty-four cents, ($59,379.34,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
1872.	Sup.		1872.				
1590	971	Stores.	March.	12 96	.....	.....	12 96
1873.			1871. 1872.				
331	996	" ..	Sept., Nov. Jan., June.	14,965 39	183 04	89 16	15,059 27
"	997	" ..	1871. 1872. May, Nov. Jan., July	15,324 59	.....	03	15,324 56
"	998	" ..	1871. 1872. Oct., Dec. Jan., July	19,667 78	12 26	1 17	10,678 87
* "	999	" ..	1871. 1872. July, Nov. May, July.	345 43	05	27 80	317 68
"	1000	Troops..	1872. Mch., Sept., Oct.	17,986 00	.....	.....	17,986 00
				$59,302 15	195 35	118 16	59,379 34

*From account (No. 699,) B. L. No. 483, July 24, 1872, voucher No. 2398, for transportation of naval stores, amount sixteen dollars and seventy-seven cents, ($16.77,) has been withdrawn and referred to Sec. Navy.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1590, (Q. M. G. O.,) 1872.
331, (Q. M. G. O.,) 1873.

24 B.] EXHIBIT 12.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., June 18th, 1875.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston Mass.:

SIR: Seven (7) accounts of your company for the transportation of troops and military stores in November, 1871, to January, (inclu.,) 1873, transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., March 1, 5, 20, and 21, and April 8, 9, and 10, 1873, amounting, as rendered, to ninety-three thousand nine hundred and seventy-three dollars and forty-eight cents, ($93,973.48,) have been examined and corrected, as per annexed recapitulation, to ninety-three thousand nine hundred and eighty-seven dollars and thirty-three cents, ($93,987.33,) and

referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March, 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Corrected amount.
			1872.			
373	1001	Troops...	December.	$5,413 50	.....	$5,413 50
			1872. 1873.			
383	1002	"	Dec. Jan.	5,879 00	.....	5,879 00
			1872.			
485	1003	Stores ...	Feb., Apl, May	1,133 57	.....	1,133 57
			1872. 1873.			
494	1004	Troops..	Oct. Jan.	3,506 10	$13 85	3,519 95
			1872.			
600	1005	"	Sept., Oct., Nov.	4,484 60	.....	4,484 60
			1871. 1872.			
601	1006	Stores ...	Nov., Apl., May, July, Aug.	4,108 61	.....	4,108 61
			1872.			
602	1007	Troops...	Nov.	69,448 10	.....	69,448 10
				$93,973 48	$13 85	$93,987 33

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

373, 383, 485, 494, 600, 601, 602, (Q. M. G. O.,) 1873.

25 B.] EXHIBIT 13.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., June 21st, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co.:

SIR: Five (5) accounts of your company for the transportation of troops and military stores in July, 1872, to March, (inclu.,) 1873, transmitted by Major A. J. Perry, chief qu'm'r Dept. Platte, Omaha, Neb., April 21st, 1873, amounting, as rendered, to fourteen thousand and seventy-nine dollars and thirty cents, ($14,079.30,) have been examined and found correct, and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Amount.
			1872.	
667	1012	Stores	July, Aug.	1,593 95
"	1013	"	July, Sept.	5,721 60
			1873.	
"	1014	Troops	Jan., Feb.	2,935 75
"	1015	"	" "	209 00
"	1016	"	Jan., Mch.	3,619 00
				$14,079 30

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

667, (Q. M. G. O.,) 1873.

26 B.] EXHIBIT 14.

(Trans. Form. H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., July 11th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Two (2) accounts of your company for the transportation of military stores in January to October inclusive, 1872, transmitted by Major A. J. Perry, chf. qu'm'r Dept. Platte, Omaha, Neb., May 26th, 1873, amounting, as rendered, to four thousand eight hundred and fourteen dollars and forty-one cents, ($4,814.41,) have been examined and corrected, as per annexed recapitulation, to four thousand eight hundred and nine dollars and ninety-two cents, ($4,809.92,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
			1872.				
843	1026	Stores	July, Sept., Oct.	4,760 57	48 47	55 92	$4,753 12
"	1027	"	Jan., Oct.	53 84	3 14	18	56 80
				$4,814 41	51 61	56 10	4,809 92

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

843, (Q. M. G. O.,) 1873.

27 B.] EXHIBIT 15.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., July 2d, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Two (2) accounts of your company for the transportation of troops and military stores in November, 1871, to Dec., 1872, (inclu.,) transmitted by Major A. J. Perry, chf. qu'm'r Dept. Platte, Omaha, Neb., May 3d and 7th, 1873, amounting, as rendered, to seven thousand and sixty-seven dollars and thirty-six cents, ($7,067.36,) have been examined and corrected, as per annexed recapitulation, to seven thousand and forty-three dollars and forty-one cents, ($7,043.41,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
729	1017	Stores ...	1872. July, Sept.	722 21	.....	722 21
748	1018	Troops ..	1871. 1872. Nov., Aug. Sept., Nov., Dec.	6,345 15	23 95	6,321 20
				$7,067 36	23 95	7,043 41

Two subvouchers, for transportation of troops in Nov., 1871, not being sustained by original transportation-orders, have been withdrawn and retained in this office for further evidence from the issuing officer of this Dept., and the amount, $23.95, deducted.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

729, 748, (Q. M. G. O.,) 1873.

28 B.] EXHIBIT 16.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., July 18th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company for the transportation of troops and military stores in July, 1871, to April, 1873, (inclu.,) transmitted by Major A. J. Perry, ch'f qu'm'r Dept. Platte, Omaha, Neb., June 4th and 21st, 1873, amounting, as rendered, to fifteen thousand

eight hundred and eight dollars and ninety-two cents, ($15,808.92,) have been examined and corrected, as per annexed recapitulation, to fifteen thousand eight hundred and eight dollars and eighty-two cents, ($15,808.82,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (sect. 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
902	1032	Troops	1873. March, April.	1,317 00	.....	1,317 00
902	1033	Stores	1872. July, Oct.	13,444 11	10	13,444 01
963	1037	"	1871. 1872. July, Aug. Oct., Nov.	1,047 81	.....	1,047 81
				$15,808 92	10	15,808 82

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

902, 963, (Q. M. G. O.,) 1873.

29 EXHIBIT 17.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., July 25th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co.:

SIR: Ten (10) accounts of your company, (Omaha Bridge Transfer,) for the transportation of troops and military stores in April, 1872, to May, 1873, inclu., transmitted to Capt. James Gilliss, A. Q. M., Chicago, Ill., and Major A. J. Perry, C. Q. M., Dept. Platte, Omaha, Neb., April 17, May 16, 19, 28, June 2, 14, 13, and 20th, 1873, amounting, as rendered, to four hundred and eighty-six dollars and thirteen cents, ($486.13,) have been examined and corrected, as per annexed recapitulation, to four hundred and eighty-two dollars and five cents, ($482.05,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of March 3, 1873, section 2.

Reg. No.	No. acct.	Cl.—Fol.		Trans.	Date.	Original. amount.	Deduc-tion.	Corrected amount.
					1872.			
631	1011	171	247	Stores....	June.	53	.....	53
					1872. 1873.			
783	1019	172	19	"	Oct. Feb'y.	90 87	.....	90 87
					1873.			
801	1020	"	20	"	Feb.	5 32	.....	5 32
854	1028	"	40	Troops...	1872.—Aug.	10 00	.....	10 00
"	1029	"	"	"	Sept.	107 00	.....	107 00
"	1030	"	41	"	1873., Feb.	4 00	.....	4 00
865	1031	"	"	Stores....	Jan., Mch.	39 38	.....	39 38
925	1834	"	45	".....	Feb., Mch.	1 32	.....	1 32
					1872. 1873.			
927	1035	"	"	"	Apl., June. Feb.	190 42	4 08	186 34
					1873.			
950	1036	"	46	"	Apl., May.	37 29	.....	37 29
						$486 13	4 08	482 05

Respectfully, your obedient servant,
By order of the Quartermaster-General:
M. I. LUDINGTON, *Quartermaster U. S. A.*

631, 783, 801, 854, 865, 925, 927, 950, (Q. M. G. O.,) 1873.

30 W.] EXHIBIT 18.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., July 31st, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company, for the transportation of troops and military stores in June, 1871, to March, inclu., 1873, transmitted by Major A. P. Perry, ch'f q'rm'r, Dept. Platte, Omaha, Neb., May 19th, 1873, amounting, as rendered, to twenty thousand nine hundred and twenty-five dollars and three cents, (20,925.03,) have been examined and corrected, as per annexed recapitulation, to twenty thousand nine hundred and twenty-four dollars and fifty-three cents, ($20,924.53,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Cl.—Fol.	Trans.	Date.	Original amount.	De-duct.	Corrected amount.
				1872.			
813	1022	172 24	Stores.	Sept., Oct.	1,185 36	50	1,184 86
				1871. 1872.			
"	1023	" 28	"	June, Nov. June, Oct.	5,074 57	.....	5,074 57
				1873.			
"	1025	" 35	Troops.	Feb., Mar.	14,665 10	.....	14,665 10
					$20,925 03	50	20,924 53

Respectfully, your obedient servant,
By order of the Quartermaster-General:
M. I. LUDINGTON, *Quartermaster, U. S. A.*

813, (Q. M. G. O.,) 1873.

31 W.] EXHIBIT 19.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., August 21st, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: An account of your company (Omaha Br. Transpr.) for the transportation of troops, in May, 1873, transmitted by Capt. Jas. Gilliss, A. Q. M., Chicago, Ill., July 9, 1873, amounting, as rendered, to seven dollars, ($7.00,) has been examined and found correct, and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, section 2.

Also, a supplemental account (made up in this Office, from the account of the Chicago and Northwestern R. R. Co., for the transportation of military stores) in favor of Union Pacific R. R., (Omaha Br. Transpr.,) in amount as per extract copy, as corrected, to twenty-eight dollars and seventy-eight cents, ($28.78,) found correct, and referred to the Third Auditor as above. The original account of the C. & N. W. R. R. was forwarded by Capt. Gilliss, Feb. 24, 1873, amount, $374.51, as stated.

Reg. No.	No. account.	Trans.	Date.	Amount.
341	1041	Stores	1872. June.	28 78
1028	1040	Troops	1873. May.	7 00
				$35 78

Respectfully, your obedient servant,
By order of the Quartermaster-General:

WM. MYERS,
Quartermaster, U. S. A.

341, 1028, (Q. M. G. O.,) 1873.

32 B.] EXHIBIT 20.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C. September 5th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: An account of your company for the transportation of military and naval stores in August to October, (inclu.,) 1872, transmitted by Major A. J. Perry. chief q'rm'r Dept. of the Platte, Omaha, Neb.,

July 29, 1873, amounting, as rendered, to one thousand three hundred and eighty-four dollars and eighty-five cents, ($1,384.85,) has been examined and corrected, as per annexed recapitulation, to one thousand and twenty-five dollars and seventy-three cents, ($1,025.73,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	C.—Fol.		Trans.	Date.	Original amount.	Deduct.	Corrected amount.
1107..	1042	172	55	Stores....	1872. Aug., Sep., Oct.	$1,384 85	359 12	$1,025 73

Bill of lading No. 700, dated Oct. 9, 1872, for the transportation of 1,632 lbs. naval stores, in amount twenty-five dollars and thirty-six cents, ($25.36,) has been withdrawn from transmittal to the Navy Department for settlement by the Fourth Auditor of the Treasury.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster, U. S. A.

1107, (Q. M. G. O.,) 1873.

33 B.] EXHIBIT 21.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., September 11th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Five (5) accounts of your company for the transportation of troops and military stores in May, 1872, to May, (inclu.,) 1873, transmitted by Major A. J. Perry, ch'f Q. M. Dept. Platte, Omaha, Neb., July 30th, August 8th and 15th, 1873, amounting, as rendered, to forty-two thousand dollars and seven cents, ($42,000.07,) has been examined and corrected, as per annexed recapitulation, to forty-one thousand nine hundred and sixty-six dollars and sixty cents, ($41,966.60,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
1119	1043	Troops.	1872. 1873. May, Nov. Mch., Apl.	1,872 25	.....	.....	1,872 25
1156	1045	Stores..	1872. Aug., Dec.	11,298 40	.....	.....	11,298 40
1195	1047	" ..	Sept., Dec.	9,861 05	1 08	.....	9,862 13
"	1048	" ..	May, Aug., Dec.	1,558 87	53	35 08	1,524 32
"	1049	Troops.	1873. May.	17,409 50	.....	.....	17,409 50
				$42,000 07	1 61	35 08	41,996 60

Subvou. B/L Nos. 711 & 965, Oct. 12 and Dec. 19, 1872, embraced in voucher No. 2595, to account, (No. 1048,) for $1,558.87, in amount fifteen and 58/100 dollars, for transportation of naval stores; and B/L No. 935, Dec. 10, 1872, to same account, transportation of L. H. supplies, have been withdrawn and referred to Sec. Navy and Treasury.

Respectfully, your obedient servant,

By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1119, 1156, 1195, (Q. M. G. O.,) 1873.

34 B.] EXHIBIT 22.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., Sept. 12th, 1873.

J. W. GANNETT, Esq.
Auditor Union Pacific R. R. Co., Boston, Mass.:

SIR: Your communication of September 6th, in relation to certificate No. 2, dated Louisville, Ky., September 14th, 1872, in amount twenty-seven dollars, ($27,) issued by Lt. E. B. Gibbs, Sixth Infantry, A. A. Q. M., in accordance with instructions from the Quartermaster-General, in favor of the Union Pacific Railroad Company, for passenger transportation en route to San Francisco, arising in his settlement with the Marietta and Cincinnati R. R. Co., (No. 57, Abs. B.,) of his disbursing accounts for the month of June, 1871, is received.

In reply to your request for information as to the disposition of the certificate by this Office, you are informed that the same was referred to the Third Auditor August 15th, 1873, for his action, with recommendation that the amount be applied on account of the indebtedness of the road upon its bond account with the United States, as required by (sec. 5) act of July 2, 1864.

By order of the Quartermaster-General:

Respectfully, your obedient servant,

M. I. LUDINGTON,
Quartermaster U. S. A.

1264, (Q. M. G. O.,) 1873.

35 B.] EXHIBIT 23.

(Trans. Form H.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., September 26th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Ten (10) accounts of your company and Omaha Br. Transfer for the transportation of troops and military stores in November, 1871, to July, (inclu.,) 1873, transmitted by Major A. J. Perry, ch'f qu'm'r Dept. Platte, Omaha, Neb., and Capt. Jas. Gillis, A. Q. M., Chicago, Ill.,

May 7, August 8, 19, 25, 27, 28, September 3d and 5th, 1873, amounting, as rendered, to seventeen thousand four hundred and thirty-two dollars and thirty-eight cents, ($17,432.38,) have been examined and corrected, as per annexed recapitulation, to seventeen thousand four hundred and thirty-three dollars and eighty-three cents, ($17,433.83,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the provisions of the act of Congress of March 3, 1873, (sec. 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Corrected amount.
			1871.			
748 Sup.	1018 Sup.	Troops...	November.	23 95	.....	23 95
			1873.			
1144	1054	" ...	June.	50	.....	50
1179	1046	" ...	July.	1 00	.....	1 00
1206	1050	" ...	May, June, July.	1,392 50	.....	1,392 50
1231	1057	" ...	June, July.	9,216 45	.....	9,216 45
1240	1058	Stores...	March.	17	.....	17
			1872. 1873.	6,641 64	1 45	6,643 09
1244	1059	" ...	Nov., Dec., Jan.			
"	1060	" ...	1872. }	49 13	.....	49 13
"	1061	Troops...	Dec. }	102 50	.....	102 50
			1873.			
1253	1063	Stores....	Ap'l, May.	4 54	.....	4 54
				$17,432 38	1 45	$17,433 83

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1231, 1240, 1244, 1253, } Q. M. G. O., 1873.
748, 1144, 1179, 1206, }

36 B.]

EXHIBIT 24.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., October 7th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Five (5) accounts of your company, Omaha Br. Transfer, for the transportation of troops and baggage, in April, 1872, to March, 1873, (inclu.,) transmitted by Major A. J. Perry, chf. qu'm'r Dept. Platte, Omaha, Neb., August 27th, 1873, amounting, as rendered, to seven hundred and forty-one dollars and twenty-five cents, ($741.25,) have been examined and found correct, and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Amount.
			1872.	
1227	1051	Troops	April. July.	86 00
"	1052	"	Oct.	189 50
"	1053	"	Nov.	324 75
			1873.	
"	1054	"	January.	109 50
"	1055	Baggage	March.	31 50
				$741 25

Respectfully, your obedient servant,
By order Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1227, (Q. M. G. O.,) 1873.

37 B.]

EXHIBIT 25.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., October 25th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston Mass.:

SIR: Five (5) accounts of your company, and Omaha Bridge Transfer, for the transportation of troops and baggage, &c., in November, 1872, to Aug., 1873, inclu., transmitted by Major A. J. Perry, chf. Q. M., Dept. Platte, Omaha, Neb., and Capt. James Gillis, A. Q. M., Chicago, Ill., Aug. 30, Sept. 23d, October 10th and 15th, 1873, amounting, as rendered, to fourteen thousand seven hundred and sixty-one dollars and nineteen cents, ($14,761.19,) have been examined and corrected as per annexed recapitulation to fourteen thousand seven hundred and sixty-two dollars and fifty-five cents, ($14,762.55,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (sec. 2.)

Reg No.	No. acct.	Cl.	Fol.	Trans.	Date.	Original amount.	Add.	Corrected amount.
					1873.			
1245	1062	172	88	Troops	Mch., May, June.	13,693 16	1 36	13,694 52
1325	1065	"	99	"	Feb., Apl., May.	2 00	.....	2 00
"	1066	"	"	Stores	Apl., June.	16 15	.....	16 15
1368	1068	"	100	Troops	Aug.	50	.....	50
					1872. 1873.			
1398	1069	"	101	Do. & baggage	Nov. May, June.	1,049 38	.....	1,049 38
						$14,761 19	1 36	14,762 55

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1245, 1325, 1368, 1398, (Q. M. G. O.,) 1873.

38 B.] EXHIBIT 26.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., October 29th, 1873.

To the Hon. E. H. ROLLINS,
Treas. Union Pacific R. R. Co., Boston, Mass.:

SIR: An account of your company for the transportation of military and naval stores in July, 1871, to September, 1872, inclusive, transmitted by Major A. J. Perry, chf. qu'm. Dept. Platte, Omaha, Neb., May 19th, 1873, amounting, as rendered, to one thousand five hundred and fourteen dollars and seventy-two cents, ($1,514.72,) has been examined and corrected, as per annexed recapitulation, to one thousand four hundred and fifty-six dollars and thirty-one cents ($1,456.31,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congrese of March 3d, 1873, (sec. 2.)

Reg. No.	No. acct.	Cl.—Fol.		Trans.	Date.	Original amount.	Deduct.	Corrected amount.
813	1021	172	22	Stores.	1871. 1872. July, Oct. Ap., July. Sep.	$1,514 72	58 41	$1,456 31

Voucher No. 2050½ to this account, for transportation of naval stores in October, 1871, has been withdrawn and forwarded to the Secretary of the Navy. The amount of the deduction on account of this withdrawal is twelve dollars and thirty-seven cents, ($12.37.)

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

813, (Q. M. G. O.,) 1873.

39 [B. EXHIBIT 27.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,
Washington, D. C., November 6th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: An account of your company for the transportation of troops and baggage in June, 1870, to May, 1873, (inclusive,) transmitted by Major A. J. Perry, chief quartermaster, Dept. Platte, Omaha, Neb., August 25th, 1873, amounting, as rendered, to thirty-seven thousand and eighty-eight dollars and ninety cents, ($37,088.90,) has been examined and corrected, as per annexed recapitulation, to thirty-six thousand one hundred and forty-five dollars and seventy cents, ($36,145.70,) and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
1230	1056	Troops.....	1870. 1873. June. Apl., May.	$37,088 90	943 20	36,145 70

The above deduction of $943.20 is caused by the withdrawal of sub-voucher, (trans. order No. 6756, May 16, 1873,) which is retained in this Office for further information from the officer who issued the order.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1230, (Q. M. G. O.,) 1873.

40 B.] EXHIBIT 28.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., November 8th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company and Omaha Br. Transfer, for the transportation of troops and military stores, in September, 1872, to August, (1873, inclu.,) transmitted by Major A. J. Perry, C. Q. M. D. Platte, Omaha, Neb., and Capt. Jas. Gilliss, asst. q'rm'r, Chicago, Ill., with communications of Sept. 4th, October 6th and 22nd, 1873, amounting, as rendered, to thirteen thousand and seventy-seven dollars and eighteen cents, ($13,077.18,) have been examined and corrected, as per annexed recapitulation, to twelve thousand one hundred and ten dollars and seventy-five cents, ($12,110.75,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3rd, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
1258	1064	Stores ...	1872. 1873. Dec. Jan., Feb.	7,128 44	164 13	1,130 56	6,162 01
1359	1067	Troops ..	1873. July. Aug.	2 00	.....	.....	2 00
1435	1070	Stores ...	1872. 1873. Sep. Jan., Mch.	5,946 74	.....	.....	5,946 74
				$13,077 18	164 13	1,130 56	12,110 75

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1258, 1359, 1435, (Q. M. G. O.,) 1873.

41 B.] EXHIBIT 29.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., Nov. 14th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Two (2) accounts of your company for the transportation of troops and military stores, in March to August, (inclu.,) 1873, transmitted by Major A. J. Perry, chief quartermaster Dept. of the Platte, Omaha, Neb., October 25, 1873, amounting, as rendered, to four thousand three hundred and seventy-seven dollars and forty-five cents, (4,377.45,) have been examined and corrected, as per annexed recapitulation, to four thousand three hundred and fifty-six dollars and forty-three cents, ($4,356.43,) and referred to the Third Auditor Treasury Department for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Cl.—Fol.		Trans.	Date.	Original amount.	Deduct.	Corrected amount.
					1873.			
1458	1071	172	107	Stores.	Mar., May.	3,116 45	6 24	3,110 21
"	1072	"	113	Troops.....	July., Aug.	1,261 00	14 78	1,246 22
						$4,377 45	21 02	4,356 43

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1458, (Q. M. G. O.,) 1873.

42 B.] EXHIBIT 30.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., Nov. 19th, 1873.

To Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Two (2) accounts of your company for the transportation of troops and military stores, in February, 1872, to September, 1873, (inclu.,) transmitted by Major A. J. Perry, chf. qu'm'r Dept. Platte, Omaha, Neb., and Capt. J. Gilliss, A. Q. M., Chicago, Oct. 27 and 31st, 1873, amounting, as rendered, to twelve thousand four hundred and

ninety-seven dollars and sixty-six cents, ($12,497.66,) have been examined and corrected, as per annexed recapitulation, to twelve thousand three hundred and eighty-seven dollars and fifty-four cents, ($12,387.54,) and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, section 2.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
			1872. 1873.				
1459	1073	Stores.	Feb., Dec. Jan., Mch.	12,496 66	2 20	112 32	12,386 54
			1873.				
1467	1074	Troops.	September.	1 00	.....	.....	1 00
				$12,497 66	2 20	112 32	12,387 54

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1459, 1467, (Q. M. G. O.,) 1873.

43 B.] EXHIBIT 31.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., November 22d, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Four (4) accounts of your company, for the transportation of troops and military stores, in October, 1872, to Sept., (inclu.,) 1873, transmitted by Major A. J. Perry, ch'f q'rm., Dept. Platte, Omaha, Neb., Nov. 3d, 1873, amounting, as rendered, to fifty thousand five hundred and ninety-five dollars and eighty-two cents, ($50,595.82,) have been examined and corrected, as per annexed recapitulation, to fifty thousand two hundred and thirty-four dollars and forty-two cents, ($50,234.42,) and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
			1873.				
1489	1076	Troops...	June, Aug.	6,834 74	.....	.....	6,834 74
"	1077	"	June, Aug., Sep.	20,591 60	.....	.....	20,591 60
"	1078	"	Aug., Sept.	13,835 50	.....	.....	13,835 50
			1872. 1873.				
			Oct. Mch.				
"	1079	Stores...	Nov., Apl., May.	9,333 98	9 46	370 86	8,972 58
				$50,595 82	9 46	370 86	50,234 42

Voucher No. 2730, to account (No. 1079) for $9,333.98, in amount $316.61, has been withdrawn, for further information from the C. Q. M. Dept. Platte, the transportation being en route from San Francisco to Cheyenne.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1489, (Q. M. G. O.,) 1873.

44 B.] EXHIBIT 32.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., November 20th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: An extract of account in favor of your company, (Omaha Br. Transfer,) for the transportation of military stores (154,589 lb.) C. Bluffs to Omaha, in March and April, 1872, transmitted by Capt. E. B. Grimes, A. Q. M., St. Louis, Mo., October 1, 1873, amounting, as rendered, to one hundred and twenty-three dollars and sixty-seven cents, ($123.67,) has been examined and found correct, and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, section 2.

This extract comprises amount withdrawn from account of the Missouri Pacific R. R. Co. for $827.30; referred to the Third Auditor Nov., 1873, (1341, Q. M. G. O., 1873.)

Reg. No.	No. account.	Trans.	Date.	Amount.
1341	1075	Stores.....	1872. Mch.—April.	123 67

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON.
Quartermaster U. S. A.

1341, (Q. M. G. O.,) 1873.

45 B.] EXHIBIT 33.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., Dec. 1st, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Seven (7) accounts of your company, (Omaha Bridge Transfer,) for the transportation of troops and military stores, in Aug't, 1872, to

Oct., 1873, transmitted by Major A. J. Perry, C. Q. M., Dept. Platte, Omaha, Neb., Nov. 17th and 18th, 1873, amounting, as rendered, to one thousand four hundred and forty-one dollars and eighty cents, ($1,441.80,) have been examined and found correct, and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (sec. 2.)

Reg. No.	No. account.	Trans.	Date.	Amount.
			1873.	
1553	1080	Stores	Aug., Sep.	117 89
"	1081	"	Sept.	75 04
"	1082	"	April.	103 18
"	1083	"	May, June.	170 89
"	1084	"	Sept., Oct.	80 90
"	1085	Troops	Aug., Sept.	88 50
			1872. 1873.	
"	1086	Stores	Aug., Dec., Jan.	805 40
				$1,441 80

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1553 and 1554, 1873.

46 No. 1624.] EXHIBIT 34.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., Dec. 16th, 1873.

SIR: You are advised that an account in favor of U. P. R. R. Co., for transportation, presented per your letter of 3d instant, amounting to $1,317.50, has been examined and allowed by this Office for the sum named, and is this day referred to the Second Auditor of the Treasury for settlement, payment to be made to said railroad company in accordance with act March 3, 1873.

Very respectfully, your obedient servant,

H. R. CLUM,
Adg. Commissioner.

J. W. GANNETT, Esq.,
Auditor, Omaha.

EXHIBIT 34—Continued.

[All official letters to this Office must be addressed to the "Second Auditor of the Treasury," and, in replying to letters from this Office, the initials on the upper left-hand corner should be referred to.]

J. H. C., 64.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
March 13th, 1874.

SIR: A settlement of the account of the Union Pacific Railway Company, comprising claim for transportation of the Crow Indian delegation from

Ogden, Utah, to Omaha, Neb., in October, 1873, has been made, and a balance found due the company of $180.93, differing $1,136.57 from its account, as explained in the accompanying statement.

The amount found due will be carried to the credit of the company on the books of the Register of the Treasury, in conformity with 2d section of act of March 3d, 1873, (Statutes at Large,) vol. 17, page 508.

Respectfully,

E. B. FRENCH, *Auditor*,
By A. F. W.

J. W. GANNETT, Esq.,
Auditor Union Pacific R. R. Co., Omaha, Neb.

47 EXHIBIT 35.

[All official letters to this Office must be addressed to the "Second Auditor of the Treasury," and, in replying to letters from this Office, the initials on the upper left-hand corner should be referred to.]

J. M. S.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
January 7, 1874.

SIR: The account of the Union Pacific R. R. Co. for the transportation of ordnance-stores from Omaha, Neb., to Cheyenne and Laramie, W. T., August 12, 1872, as approved by order of the Chief of Ordnance, U. S. A., Dec. 29th, 1873, for $124.78, has been settled this day and confirmed by the 2d Comptroller. A requisition will issue in favor of the company, to go to its credit on the books of the Register of the Treasury, for the amount above named, as per act Mch. 3, 1873, sect. 2.

Respectfully,

E. B. FRENCH, *Auditor*,
By J. M. S.

Hon. E. H. ROLLINS,
Treas'r Union Pacific R. R. Co.,
P. O. Box 3377, Boston, Massachusetts.

W. A. M., 82.

48 B.] EXHIBIT 36.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., January 13th, 1873.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston Mass.:

SIR: An extract of an account of your company for the transportation of troops in May, 1873, transmitted by Major A. J. Perry, chf. qu'm'r Dept. of the Platte, Omaha, Neb., August 25th, 1873, amounting, as rendered, to nine hundred and forty-three dollars and twenty cents, ($943.20,) has been examined and corrected, as per annexed recapitulation, to six hundred and two dollars and forty cents, ($602.40,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
1230 sup.	Sup. 1056	Troops.....	1873. May.	$943.20	340.80	602.40

The rate allowed for the transportation of Co. G, 13th Inf., Lt. Baker comd'g, embraced in this account, has been reduced from 1st-class rate, Carter to Ft. F. Steele, $19.65, to the pro rata of the second-class rate between Omaha and Cheyenne, 516 miles, $31; being, for 209 miles, $12.55, agreeably to the decision of the Hon. Secretary of War of Jan. 6th, 1874.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A

1230, (Q. M. G. O.,) 1873.

49 B.] EXHIBIT 37.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., January 16th, 1874.

To Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Nine (9) accounts of your company, (Omaha Bridge Transfer,) for the transportation of troops and military and naval stores, in November, 1872, to November, 1873, transmitted by Major A. J. Perry, ch'f. qu'mr. Dept. of the Platte, Omaha, and Capt. J. Gilliss, A. Q. M., Chicago, Nov. 19, Dec. 3, 11, 1873, amounting, as rendered, to one thousand seven hundred and nineteen dollars and thirty-five cents, ($1,719.35,) have been examined and corrected, as per annexed recapitulation, to one thousand seven hundred and thirteen dollars and six cents, ($1,713.06,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	De-duct.	Corrected amount.
			1873.			
1567	1087	Stores.....	Mch., June.	859 20	6 29	852 91
"	1088	Troops.....	Mch., Apl.	2 50	.....	2 50
"	1089	"	Apl., May.	685 00	.....	685 00
			1872. 1873.			
"	1090	"	Nov., May, June.	59 15	.....	59 15
			1873.			
"	1091	"	June, July, Aug.	86 00	.....	86 00
"	1092	"	June, July.	19 00	.....	19 00
1619	1096	"	Oct.	1 00	.....	1 00
1652	1097	"	Aug., Oct., Nov.	5 50	.....	5 50
"	1098	"	Oct., Nov.	2 00	.....	2 00
				$1,719 35	$6 29	$1,713 06

B/L Apl. 15,'73, 9,589 lb.; April, 2,170 lb.; May, 832 lb., for transportation of naval stores, withdrawn, amount, $6.29, and forwarded to the Sec. of War, for transmittal to the Secretary of the Navy.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1567, 1619, 1652, (Q. M. G. O.,) 1873.

50 B. EXHIBIT 38.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., January 21st, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Three (3) accounts of your company for the transportation of military stores and for expressage, in September, 1871, to June, 1873, (inclu.,) transmitted by Major A. J. Perry, chief qu.-mr. Dept. Platte, Omaha, Neb., November 15, 1873, amounting, as rendered, to eleven thousand five hundred and thirty-nine dollars and ninety-eight cents, (11,539.98,) have been examined and corrected, as per annexed recapitulation, to eleven thousand five hundred and nine dollars and six cents, ($11,509.06,) and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, section 2.

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected amount.
			1871. 1872. 1873.				
1568	1093	Stores....	Oct., Apl., Sept., Nov., May. 1873.	9,051 31	1.30	9 12	9,043 49
"	1094	"	Jan. Apl. June. 1872. 1873.	1,932 17	.....	23 10	1,909 07
"	1095	Funds.....	May. May.	556 50	.....	.....	556 50
				$11,539 98	1.30	32 22	11,509 06

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1568, (Q. M. G. O.,) 1873.

51 B.] EXHIBIT 39.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH.)
Washington, D. C., February 6th, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Two (2) accounts of your company, for the transportation of

military and naval stores, in September, 1871, to May, 1873, (inclu.,) transmitted by Major A. J. Perry, chief quartermaster Dept. Platte, Omaha, Neb., December 22d, 1873, amounting, as rendered, to four thousand one hundred and ten dollars and eighty-nine cents, ($4,110.89,) have been examined and corrected, as per annexed recapitulation, to four thousand one hundred and nine dollars and sixteen cents, ($4,109.16,) and referred to the Third Auditor Treasury Department, for settlement, and to the honorable the Secretary of War, for transmittal to the Hon. Secretary of the Navy, for settlement by the Fourth Auditor Treasury Department, in accordance with the act of Congress of March 3, 1873, (sec. 2.)

Reg. No.	No. act.	Cl.	Fol.	Trans.	Date.	Original amount.	Add.	Deduct.	Cor. amount.	Third Aud.	Fourth. Aud.
					1871. 1872. 1873. Jan.,						
*1700	1099	172	155	Stores	Sept. Dec. May. 1872. 1873.	2,325 71	2 40	4 24	2,323 87	2,301 92	21 95
"	1100	"	156	"	Dec. Jan. Apl.	1,785 18	11		1,785 29	.....	1,785 29
						$4,110 89	2 51	4 24	4,109 16	2,301 92	1,807 24

*B/L. No. 348, dated April 22, 1873, for 810 lb. naval stores, withdrawn, and amount deducted from account referred to Third Auditor, and forwarded to Navy Dept.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1700, (Q. M. G. O.,) 1873.

52 B.] EXHIBIT 40.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., March 24th, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Eleven (11) accounts of your company for the transportation of troops and military stores in January, 1872, to December, 1873, (inclu.,) transmitted by Major A. J. Perry, chf. qu'm'r, Dept. Platte, Omaha, Neb., and Capt. Jas. Gilliss, A. Q. M., Chicago, Ill., December 27th, 27*th*, 29th, 1873, and Jan. 6th, 9th, 14th, and February 3d and 3*d*, 1874, amounting, as rendered, to sixty-eight thousand four hundred and ninety-eight dollars and fifty-nine cents, ($68,498.59,) have been examined and corrected, as per annexed recapitulation, to sixty-eight thousand four hundred and twenty-one dollars and seventeen cents, ($68,421.17,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Deduct.	Corrected account.
			1873.				
25	1102	Stores.....	Feb. March.	942 08	...	10	941 98
68	1103	"	1872—Aug.	41	...	.....	41
"	1104	"	Aug., Sept., Oct., Dec.	20 94	...	.....	20 94
"	1105	"	1873—May.	13 14	...	.....	13 14
69	1106	Troops.....	Sept., Oct.	2,577 00	...	.....	2,577 00
72	1107	T'ps, b'g'e.	Sept., Oct.	32,450 75	...	.....	32,450 75
			1872. 1873.				
92	1108	Stores.....	Oct., Apl. May, June.	9,316 44	10	77 42	9,239 12
			1873.				
106	1109	Troops.....	Oct., Nov.	6,102 83	...	.....	6,102 83
"	1110	"	Sept., Oct., Nov.	15,358 50	...	.....	15,358 50
210	1111	"	Aug., Oct., Nov.	4 50	...	.....	4 50
			1872. 1873.				
211	1112	"	Jan. Aug., Nov., Dec.	1,712 00	...	.....	1,712 00
				$68,498 59	10	77 52	68,421 17

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

25, 68, 69, 72, 92, 106, 210, 211, (Q. M. G. O.,) 1874.

53 G. F.] EXHIBIT 41.

No. 2112.] DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., April 2, 1874.

SIR: You are advised that an account in favor of U. P. R. R. Co., for transportation, presented per your letter of Dec. 22d last, amounting to $11.02, has been examined and allowed by this Office for the sum named, and is this day referred to the Second Auditor of the Treasury for settlement, payment to be made to said co., in conformity with law.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

J. W. GANNETT, Esq.,
Auditor, &c., Omaha, Neb.

EXHIBIT 42.

[All official letters to the Department proper must be addressed to the "Secretary of the Treasury," and, in replying to letters from the Department, the initials on the upper left-hand corner should be referred to.]

R. S.] TREASURY DEPARTMENT,
Washington, D. C., April 10, 1874.

SIR: In reply to yours of the 7th instant, I have to inform you that your bills for transportation of B. &. O. R. R. C., car No. 232, from Omaha to Ogden and return, $10.32 each, to which you refer, have

been credited to the company under the 2nd section of the act of March 3d, 1873.

Respectfully,

B. A. SAWYER,
Asst. Secretary.

J. W. GANNETT, Esq.,
Auditor U. P. R. R. Co., Omaha, Neb.

54 H. D.] EXHIBIT 43.

No. 2141.] DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., April 15, 1874.

SIR: You are advised that an account in favor of U. P. R. R. Co., for transportation, presented per your letter of April 2d inst., amounting to $435.60, has been examined and allowed by this Office for the sum named, and was yesterday referred to the Second Auditor of the Treasury for settlement, payment to be made to said co. in accordance with law.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

J. W. GANNETT, Esq.,
Auditor, &c., Omaha, Neb.

55 B.] EXHIBIT 44.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., April 31st, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: An extract of an account of your company, for the transportation of military stores (No. 1089, supplemental) in May, 1873, transmitted by Major A. J. Perry, chief qu'm'r Dept. of the Platte, Omaha, Neb., November 3d, 1873, amounting, as rendered, to three hundred and sixteen dollars and sixty-one cents, ($316.61,) has been examined and corrected, as per annexed recapitulation, to one hundred and twenty-seven dollars and forty-one cents, ($127.41,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Deduct.	Corrected amount.
1873. 1489 sup.	1079 sup.	Stores	1873. May.	$316 61	189 20	127 41

Reference is made to letter from this Office to you, dated November 22,

1873. The above amount is embraced in voucher No. 2730, to account for $9,333.98, noted therein.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

1489, (Q. M. G. O.,) 1873.
445, (Q. M. G. O.,) 1874.

56 B.] EXHIBIT 45.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., May 4th, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Nine (9) accounts of your company, for the transportation of troops and military stores, in February, 1873, to February, 1874, inclu., transmitted by Maj. A. J. Perry, ch'f. qu'm'r Dept. Platte, Omaha, Neb., Maj. J. M. Moore, qu'm., Cheyenne, W. T., and Capt. James Gilliss A. Q. M., Chicago, Feb. 12, 13, 25, 28, and March 2, 5, 10, and 14th, 1874, amounting, as rendered, to twenty-one thousand four hundred and thirty-three dollars and eighty cents, ($21,433.80,) have been examined and found correct, and referred to the Third Auditor, Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Amount.
			1873.	
269	1118	Troops	Oct., Nov., Dec.	15,115 10
270	1119	"	Nov., Dec.	191 00
347	1120	Stores	June.	6 31
"	1121	"	July.	1 65
			1874.	
355	1122	Troops	December. January.	1,270 50
			1873. 1874.	
359	1123	"	Dec. January.	55 00
			1873.	
387	1124	Stores	Feb., April.	50 65
			1874.	
404	1125	Troops	Oct., Dec., Jan.	4,741 90
407	1126	Stores	Jan., Feb.	1 69
				$21,433 80

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

269, 270, 347, 355, 359, 387, 404, 407, (Q. M. G. O.,) 1874.

57 W.] EXHIBIT 46.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH.)
Washington, D. C., May 5th, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Two (2) accounts of your company, for the transportation of military stores, in July to September, (inclusive,) transmitted by Major A. J. Perry, chief quartermaster Dept. of the Platte, Omaha, Neb., April 6th and 11th, 1874, amounting, as rendered, to seven thousand one hundred and eighty dollars and thirty-three cents, ($7,180.33,) have been examined and corrected, as per annexed recapitulation, to seven thousand one hundred and eighty dollars and fifty-three cents, ($7,180.53,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3d, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.	Original amount.	Add.	Corrected Amount.
			1873.			
553	1131	Stores	Aug. Sept.	1,501 25	.....	1,501 25
591	1133	"	June. Sept.	5,679 08	.20	5,679 28
				$7,180 33	.20	7,180 53

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

553, 591, (Q. M. G. O.,) 1874.

58 B.] EXHIBIT 47.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., May 7th, 1874.

To the Hon. E. H. ROLLINS,
Treas. of the Union Pacific R. R. Co., Boston, Mass.:

SIR: Four (4) accounts of your company, for the transportation of military stores, in October, 1872, to September, (inclu.,) 1873, transmitted by Major A. J. Perry, chief quartermaster Dept. of the Platte, Omaha, Neb., February 9th, 1874, amounting, as rendered, to twenty six thousand one hundred and seventy-six dollars and eighty-eight cents, ($26,176.88,) have been examined and corrected, as per annexed reca-

pitulation, to twenty-six thousand and forty-two dollars and fifty-seven cents, ($26,042.57,) and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. acct.	Trans.	Date.		Original amount.	Deduct.	Corrected amount.
			1872.	1873.			
263	1113	Stores.....	Oct.	Apl., Sept.	12,712 51	8 00	12,704 51
"	1114	"	July.	Sept.	5,101 64	47 12	5,054 52
		.....	1872.	1873.			
"	1115	"	Nov.	Apl., Aug.	6,849 05	24 36	6,824 69
"	1116	"		June.	1,513 68	54 83	1,458 85
					$26,176 88	134 31	26,042 57

Acct. No. 1117, amount nineteen and $\frac{63}{100}$ dollars (19.63) has been forwarded to Navy Dept.

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

263, (Q. M. G. O.,) 1874.

59 B.] EXHIBIT 48.

(Trans. Form H.)

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
(TRANSPORTATION BRANCH,)
Washington, D. C., May 12th, 1874.

To the Hon. E H. ROLLINS,
Treas. of the Union Pacific R. R. Co. Boston, Mass.:

SIR: An account of your company, for the transportation of troops, in January and February, 1874, transmitted by Major A. J. Perry, chief quartermaster Dept. of the Platte, Omaha, Neb., April 18th, 1874, amounting, as rendered, to one thousand five hundred and forty-eight dollars, ($1,547,) has been examined and found correct, and referred to the Third Auditor Treasury Department, for settlement, in accordance with the act of Congress of March 3, 1873, (section 2.)

Reg. No.	No. Account.	Trans.	Date.	Amount.
			1874.	
615	1135	Troops	Jan., Feb.	$1,548 00

Respectfully, your obedient servant,
By order of the Quartermaster-General:

M. I. LUDINGTON,
Quartermaster U. S. A.

615, (Q. M. G. O.,) 1874.

60 [G. F.] EXHIBIT 49.

No. 2166.] DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 4, 1874.

SIR: You are advised that an account in favor of the U. P. R. R. Co. for transporting Indian goods and supplies during July, August, September, and December, 1872, and January, March, May, and June, 1873, amounting to $13,023.07, has been examined and allowed by this Office for the sum named, and is this day referred to the Second Auditor of the Treasury for settlement, payment to be made to said company in accordance with sec. 2 of act Congress March 3, 1873.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

J. W. GANNETT, Esq.,
Auditor U. P. R. R. Co., Omaha, Neb.

61 Neb. S.] EXHIBIT 50.

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL.
Washington, D. C., July 3d, 1874.

SIR: In reply to your favor of the 30th ultimo, I have to inform you that compensation has been fixed upon returns submitted under act 3d March, 1873, on route 14401, between Omaha and Ogden, at $315 per mile per annum, increasing the annual allowance from $283,855 to $325,143 from July 1, 1873.

Very respectfully,

JOHN L. ROUTT,
Second Asst. P. M. Gen'l.

E. H. ROLLINS, Esq.,
Treasurer Union Pacific R. R. Co., Boston, Mass.

62 In the United States Court of Claims. December term, A. D. 1873.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 9830.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein, and not confessing the same or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of money as claimed in the petition, or any other sum of money, the said defendants say they are not indebted to the said claimant in the said sum of money, nor any part thereof, or any other sum of money.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

Filed October 3, 1874.

63 In the Court of Claims of the United States. December term 1874.

UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 9830.

Answer and set-off.

The Attorney-General, on behalf of the United States, comes and makes answer to the petition filed by the claimant in the above suit, and says: That the Secretary of the Treasury is prohibited by the act of March 3, 1873, from making payments to the claimant in this suit on account of freights and transportation over its main road and branches thereof, including the claims in this suit, and therefore the defendants deny that they are indebted to the claimant, as set forth in their petition.

And he further says, that the defendants are not indebted to the claimant under the provisions of the act of July 1, 1862, the act of July 12, 1864, or any other act of Congress, or otherwise.

And further says, that the claimant is indebted to the defendants in the sum of $12,000,000 in this:

That, under the provisions of the act of July 1, 1862, and acts amendatory thereof, coupon bonds of the United States, bearing interest at the rate of six per centum per annum, payable semi-annually, were issued to the amount of $100,000,000, by the defendants to the claimant, as a loan or advance for the purposes mentioned in the said act, and the defendants have paid the annual interest on the said bonds to the holders thereof, at the stated semi-annual periods; and the claimant therefore was and is bound by law, from time to time, as such interest accrued and was due, to re imburse the defendants for all payments made by them as aforesaid for the interest upon bonds of the United States issued to the claimant according to law; and the defendants aver that the claimant has never re-imbursed to them the payments made by them as aforesaid, or any part thereof, for interest upon bonds of the United States issued to the claimant according to law; and the said claimant in this suit became and is liable to the defendants, from time to time, as such interest accrued and was due, for the payments made by them as aforesaid, for interest upon bonds as aforesaid, to wit, in the sum of $12,000,000.

Wherefore the defendants ask judgment against the claimant for the sum of $12,000,000.

JOHN GOFORTH,
Assistant Attorney-General.

Filed April 17, 1875. J. R.

64 In the United States Court of Claims. Dec. term, 1874.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 9830.

It is hereby stipulated on behalf of the plaintiffs that no judgment against the United States which may be rendered in this cause shall be collected until after final judgment in the suit brought in the circuit

court of the United States of the district of Massachusetts by the United States against the plaintiffs, under direction of the act of Congress of June 22, 1874, to recover sums claimed to be due as the five per
65 cent. of the net earnings of the railroad of the plaintiffs; and in case of a recovery by the United States in this latter suit, the judgment may be offset against any judgment for the plaintiffs in this cause; but nothing herein shall be construed to effect the right of recovery by either party in either of said suits.

S. BARTLETT,
For the Union Pacific Railroad Co.

Filed April 19, 1875.

66 In the Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } 9830.

At a Court of Claims held at the Capitol in the city of Washington the 31st day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Union Pacific Railroad Company, claimant, do have and recover of and from the United States the sum of five hundred and twelve thousand six hundred and thirty-two dollars and fifty cents, ($512,632.50,) and that the counter-claim of the defendants be dismissed.

By the court:

A true copy of record.

67 In the United States Court of Claims. Dec. term, 1874.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 9830.

From the judgment rendered in the above entitled cause, on May 31, 1875, in favor of the claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asst. Atty. General.

Filed July 8, 1875.

AT CHAMBERS,

Allowed.

C. D. DRAKE, *C. J.*

68 United States Court of Claims.

THE UNION PACIFIC RAILROAD
vs.
THE UNITED STATES.

Findings of fact.

I. The claimant, between the 1st day of January, 1873, and the 1st day of March, 1874, both inclusive, at the request of the defendants,

rendered to them certain valuable services in the transportation of their mails over the Union Pacific Railroad, the same being transported at fair and reasonable rates of compensation, not exceeding the amounts paid by private parties for the same kind of service, as provided by the act of 1st July, 1862, (12 Stat. L., p. 489,) amounting to $385,784.75. The claimant's accounts therefore have been stated to and duly allowed by the proper accounting officers of the Treasury. After the rendition of these services, the claimant consented and offered to the defendants' officers that one-half part of its above earnings, to wit, $192,892.37, be withheld from it, and applied to and on account of certain payments for interest made by the defendants upon the bond described in the second finding, and the claimant demanded payment of the remaining moiety of $192,892.37. But the defendants' officers paid to the claimant only $7,815.98, and refused to pay the balance of this moiety, to wit, $185,076.39, which still remains unpaid.

The claimant, also, between the 1st day of February, 1871, and the 28th day of February, 1874, at the request of the defendants, rendered to them certain other valuable services in the transportation of military and Indian supplies upon said Union Pacific Railroad. The fair and reasonable value of the services thus rendered amounts in the aggregate to the sum of $655,112.22, and the claimant's accounts therefor have also been stated, audited, and allowed by the proper officers of the Treasury. But the defendants have not paid the same nor any part thereof. The claimant has consented that one-half part of its above earnings, to wit, $327,556.11, be withheld from it, and applied upon the account of the payment for interest before referred to, and has demanded payment of the remaining moiety of $327,556.11; but the defendants' officers have refused to pay such moiety, which still remains wholly unpaid.

II. The defendants, at the request of the claimant, and for its use and benefit, at various times since the 1st day of January, 1866, have issued and delivered to it the bonds of the United States authorized by the act of July 1st, 1862, (12 Stat. L., p. 489,) which bonds are not coupon bonds, but are what is known as registered bonds, being in form and substance like the bond hereto annexed and forming part of these findings. All of such bonds were sold and disposed of by the claimant, and are held by third parties.

Between the 1st day of July, 1866, and the 1st day of January, 1871, both inclusive, the defendants have paid the interest accruing from time to time upon such bonds, to the parties holding the same, to the amount of $4,530,466.41. Up to the 1st day of February, 1871, the defendants' officers withheld from the claimant the one-half part of all moneys due to it, the claimant, for the transportation of mails and military supplies over the Union Pacific Railroad, and applied the moneys so withheld upon the account of interest paid by the defendants upon these
69 bonds. The officers of the Government also paid the remaining moiety of such transportation-accounts to the claimant. The claimant has not otherwise refunded the $4,530,466.41 interest before mentioned, and a balance remains unrefunded after the credit of the one-half part of such transportation-accounts.

Between the 1st day of July, 1871, and the 1st day of July, 1874, both inclusive, the defendants also paid to the third parties, for and on account of such interest on the bonds aforesaid, the further sum of $5,718,667.52. The claimant has not paid or discharged such advances for interests, but has tendered to the defendants the one-half part of its accounts for transportation, as set forth in the first finding of fact,

and the one-half part of any other transportation-accounts which it may have for other services rendered to the defendants. But the defendants, by their proper officers, have refused to receive such one-half part of such accounts in part payment of such interest, and, on the contrary, have insisted and claimed the right to retain the whole amount of such transportation-accounts, and apply it upon the advances made in payment of the interest accruing upon such bonds.

And upon the foregoing findings of fact the Court of Claims decides, as its

Conclusions of law,

that the claimant should recover the one-half part of its transportation-accounts against the defendants, and that the counter-claim of the defendants should be dismissed.

70 *Copy of a bond referred to in the foregoing findings by the court, to wit:*

THE UNION PACIFIC RAILROAD COMPANY,
REGISTER'S OFFICE, TREASURY DEPARTMENT.

Act of July 1, 1862. Act of July 2, 1864.

1,000.] [No. .

It is hereby certified that the United States of America are indebted unto or assigns, in the sum of one thousand dollars, payable on the day of 18 , with interest from the 18 , at six per cent. per annum, payable semi-annually, in lawful money, on the 1st day of January and July in each year. This debt is authorized by acts of Congress approved July 1st, 1862, and July 2nd, 1864, and is transferable on the books of this Office.

Entered , Washington, 18 .
Registered .

JOHN ALLISON, [SEAL.]
Register of the Treasury.

Payable thirty years from date.

71 In the Court of Claims. Dec. term, 1874.

THE UNION PACIFIC RAILROAD COMPANY }
vs. } 9830.
THE UNITED STATES. }

The claimant respectfully requests the court to find, as established by the evidence, the following facts:

That the petitioner paid to the United States, on account of interest, one-half of all moneys due petitioners for transportation up to the 12th of January, 1871, and the defendants have received and credited the same to the claimant, and that the United States up to the same period paid the remaining half part of the sums due the petitioner for
72 transportation in money. On the 12th of January, 1871, the Secretary of the Treasury ordered "that the entire amount of earnings of petitioner for services performed for the United States should be retained by the Government to set off the amounts of interest paid by it on their accounts." (Record, p. 128.)

That thereupon the act of Congress of March 3d, 1871, was passed,

directing the Secretary of the Treasury to pay over in money to the petitioners one-half the compensation for said services, as being in accordance with the act of July 2d, 1864, and thereupon such payments were thereafterwards made, commencing with the period when the same were stopped by the Treasury order down to the passage of the act of March 3d, 1873, sec. 2d, and the present petition seeks to recover the payments withheld in pursuance of said last-named act.

THE UNION PACIFIC R. R. CO.,
By S. BARTLETT.

73 Upon the foregoing request for findings of fact the court makes the following order, to wit:

This request is refused (except as to those portions thereof set forth in the findings of the court) as irrelevant and immaterial.

By the court.

Opinion of the court.

NOTT, J., delivered the opinion of the court:

This case comes before the court in two distinct forms: First, in that of an action brought by the Union Pacific Railroad Company to recover one-half of certain freight-earnings withheld from it by the Government. Second, in that of a cross-action brought by the United States to recover back the interest which they have paid to third persons upon their bonds heretofore loaned to the company to aid it in the construction of its road. The company admits that the Government has the right to withhold one-half of such moneys as the road may earn by the transportation of mails and military and other supplies; the United States insist that they may withhold all of these earnings and apply them in payment of their advances already made, or maintain their action for the interest on the instant that it is paid to the holders of the bonds.

The statutory history of the case, briefly stated, is this: The act of 1862 provided that the United States should loan to the company Government bonds upon condition that the Government have the right to withhold all of the moneys that might become due to the company for the transportation of mails and military and other supplies and apply the amounts thus withheld to the principal and interest of the debt. The act of 1864 substituted a half for the whole, and assured to the company the right of present payment to the extent of one half of its earnings. The act of 1871 "directed" the Secretary of the Treasury to pay this half as provided by the act of 1864, he having then recently withheld the whole. The act of 1873 "directed" the Secretary to withhold "all payments" "to the amount of payments made by the United States for interest," and provided for testing judicially the right of the company "to recover the same," and the right of the United States to recover back its advances.

74 It is to be noted at the threshold of the case that these two rights, if they exist, are distinct and independent. The company may have a valid cause of action against the Government and the Government may have a valid cause of action against the company, and the validity of either will not necessarily impair the validity of the other. When both of these rights can be asserted in the same suit by action and cross-action, the greater will practically swallow up the less, but will not in a legal sense defeat it. The court in such a case simply credits to each party what he is entitled to recover, and renders judgment in favor of one for the balance.

So far as the company's side of the case is concerned, it is manifest that its right of action must be maintained. For a valuable service rendered a present debt accrues, unless the parties have expressly provided that payment shall be deferred or appropriated to a particular purpose. In this case that purpose was declared by the act of 1864, which authorized the withholding of half, but assured the payment of the remainder. Under that act, and prior to any subsequent legislation, the whole of the railway was constructed by the one party, and all of the bonds were issued by the other. Therefore that statute, in every legal and moral sense measures the rights and the liabilities of the parties. The real and important question in the case is whether the United States can maintain their action to recover back the interest which they have advanced; and its importance is magnified (as was suggested by the learned Assistant Attorney-General) by the possibility of this resulting consequence: that if they cannot maintain this action now, they may not be able hereafter to charge interest upon their advances.

In approaching the decision of the case the court has considered, but cannot adopt, the proposition maintained by the learned counsel of the claimant, that the payments made for several years by Secretary McCulloch constituted a contemporary construction of a contract by the parties, such as courts are ordinarily bound to adopt. The Secretary was not the contracting agent of the Government, but simply its administrative officer for carrying out the provisions of the law. Moreover, there was no express contract in these transactions to be the subject of contemporary construction. A statue may contain the elements of a compact by pledging the public faith; but it is nevertheless to be construed according to the rules for statutes and not according to the rules for contracts. In cases of contract it is the purpose of courts to ascertain and give effect to the real intent of the parties. Ordinarily this is to be deduced from the words of the instrument; but where the parties at the time of performing by their mutual acts give their own meaning to their own words, courts adopt it as the true meaning, however illogical or foolish it might otherwise be deemed. The mutual understanding and agreement of the two opposite minds is the one thing to be found, and when it is ascertained the work of interpretation is ended. In cases resting upon statutes there is no mutuality of agreement to be sought out. All of the terms of the compact are dictated and accepted by one side, and the only intent which judicial construction can make certain is the intent of the legislative power.

Neither do we think the court precluded from going to the merits of the case by the doctrines of estoppel invoked by the same learned counsel. It was urged with great earnestness that the Government is now estopped from setting up a doubtful construction, because, by its former policy of paying, it misled the company into subjecting itself "to ten forfeitures, carrying its entire rights and property." But the Government is not now asserting a forfeiture. An equitable estoppel only precludes a party from asserting that which in good conscience
75 he ought not to assert. If this money be owing to the Government, good conscience does not require it to refrain from collecting the debt; for enforcing collection of a debt due works no legal wrong to the debtor. When the Government attempts to enforce these ten forfeitures the doctrine of estoppel may be applicable. To apply that doctrine to a suit for the collection of the debt without asserting forfeiture would be carrying the doctrine beyond its well-settled and rational bonds.

Neither do we attach to the act of 1871 the conclusiveness attributed

to it by the claimant's counsel. As before shown, the company had a demand against the Government for services rendered, and the Government had a demand against the company for money advanced to its use. It was perfectly consistent with the reservation of its rights for the Government to pay its debts to the company without compelling the company to pay its debts to the Government. In 1871 a Secretary of the Treasury asserted this right of set-off, which, up to that time, had lain dormant, and refused to pay the debt of the Government to the company. By the act of 1871 Congress interposed and directed the Secretary in effect not to assert this right of set-off, but to go on paying the debts of the Government as before. By the act of 1873 Congress interrupted the policy of allowing the company a credit for the advance, and "directed" the Secretary to assert for the Government the right of set-off, or, in other words, to insist to that extent upon the payment of the company's debts to the United States. If these advances for interest became debts of the company, due and payable as fast as they were made, the Government might rightfully and legally do one of two things: either it might treat them as fresh loans and charge interest upon them from the moment they were made, or it might insist upon their immediate payment in whole or in part. The act of 1871 authorized the credit; the act of 1873 insisted on the payment. The one did not extend to any cause of action belonging to the Government; the other did not infringe any right vested in the company; both left the original compact entirely untouched as it stood declared by the statutes of 1862 and 1864.

We come now to the final question in the case.

The acts of 1862 and 1864 declared and still define the bargain, whatever it may be. The learned Assistant Attorney-General has insisted that those acts, in legal contemplation, are nothing more than a charter of, and grant to, the company, and that the consideration moving to the United States is, in legal effect, nothing more than the consideration of public benefit which is theoretically received for every statute creating a body-corporate. It is well known to every one that when these statutes were passed the United States were threatened with dismemberment, and that thoughtful persons apprehended with concern the possibilities of the territory of the republic falling into three parts, and of the portion west of the Rocky Mountains, separated by deserts and cut off by natural barriers, forming an independent sovereignty. It is also equally well known that constantly recurring Indian hostilities upon the plains rendered some means of speedy transit indispensable. Finally, it is equally beyond dispute that the Government was possessed of quantities of unsalable lands which it desired to bring within the reach of purchasers. Considerations, therefore, political and financial, of no common magnitude must have operated upon the legislative mind as inducements for all the franchises and grants which those statutes created and conferred. Nevertheless, the magnitude of the consideration does not change the character of the legislation nor vary the rule of construction by which the rights of the grantee must be measured.

76 The judiciary can never weigh the advantages that a particular grant secured to the Government, nor say in one case, "here the consideration was so great that the statute should be deemed a contract and construed liberally;" and in another, "here the consideration was so small that no reciprocal advantages accrued to the Government, and the statute must be deemed a grant and construed strictly against the grantee."

But these acts of 1862 and 1864 contain something more than pro-

visions to create a corporation and confer upon it franchises and grants. The statutes really embody both a charter and a compact. As to those provisions which create the corporation, which limit its rights and franchises, which prescribe its obligations to the public and confer grants and benefits upon it, the statutes are nothing more than a charter; but as to those provisions which bind the Government to do something, which cast distinct obligations upon it, which carry it into the region of mercantile transactions and make it take a financial part in the enterprise, the statutes belong to that class of legislation which is to be so construed as to carry out the liberal and just intent of the legislature. The rights and duties of the company as a body-corporate are not involved in this suit; the things which the Government agreed to do or not to do form the only subject for judicial determination.

When the project of embarking the United States in this enterprise, by loaning Government bonds to the Pacific railways, was sanctioned, three contingencies must have been contemplated by Congress: 1. That the earnings of the company in the way of Government transportation would be substantially equal to the interest on the bonds, a contingency most unlikely, although the Government could regulate the quantity of freight which it would send over the road; 2. That the earnings of the company would be materially greater than the interest, a contingency that would remove all question of present indebtedness, and tend to reduce the principal of the debt long before the bonds would mature; 3. That the earnings and five per centum would be materially less than the interest, a contingency that has actually happened. The amount which the Government was to loan to the company was known with tolerable certainty, and the earnings of the company could be found with some approximation to truth by ascertaining the quantity of freight which the Government would be likely to send over the road and the rates which would probably be charged. It was within the power of Congress to have provided that each party should pay its debts to the other as they accrued, and it was also within its power to make some other and more complicated arrangement by which each to some extent should share in the risks of the enterprise and participate to some extent in its success. The simplest form of transaction would have been that the one party should pay the freight-bills whenever they were presented, and that the other should refund the interest so soon as it was advanced. Was that the substance of the obligation which Congress assumed toward and exacted of this company?

The act of 1862 fixed the time when the principal of the debt should become due by saying the "company shall pay said bonds at maturity." With regard to the interest the act is not equally explicit, but, so far as its express provisions go, it provides this mode of payment: "All compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid," "and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

77 And this is all which the act provides. First, services rendered to the Government; second, a portion of the net earnings of the company.

It is a fundamental principle of law, that when one man pays money to the use of another a present debt immediately ensues. But it is doubtful whether this can be interpolated into a statute, and it is not applicable when there is an express agreement which prescribes a different time or a specific mode of payment. These provisions of this

statute are not followed by a declaration, saying, in effect, that if a balance of interest remains after the application of these sources of payment, such balance of interest shall become immediately due and payable; on the contrary, the time and mode of payment, so far as they are expressly designated by the statute, are satisfied by the application of the moneys derived from those two sources.

The Assistant Attorney-General has argued that these were not intended to be the exclusive sources whence the repayment of interest on the bonds might be drawn; but that they were "inserted to create a sinking fund for the ultimate payment of the bonds," inasmuch as lands were to be sold by the company "on which the Government originally held a mortgage." If the amount derived from those two sources, it was said, should exceed the interest on the bonds, the Government would put aside the remainder as a fund for the final extinction of the debt, and would allow interest to the company upon it. However judicious and just such a course might have been, there are two reasons why the court cannot give such a construction to the statute. In the first place, it does not provide for a sinking fund, (which is an artificial means for paying a debt unknown to the law, and necessarily the creation of express agreement or express enactment, (nor does it authorize the allowance of interest on any such fund, nor couple these two sources of revenue with any object, save that of being "applied to the payment of such bonds and interest." In the second place, though lands were to be sold upon which the Government held a mortgage, still the avails were to go into the road upon which the mortgage rested. The form of the security changed, but the mortgage followed the proceeds; the security was transmuted but not relinquished, and the change from unsalable lands to a completed railway in the contemplation of Congress might have increased its value.

Moreover, (and this is the chief point in the case,) the statute makes no distinction between principal and interest, nor indicates in any way that the debt for the one shall mature at a different time than the debt for the other. Furthermore, a previous section of the statute declares that for "the amount of said bonds," "together with all interest thereon which shall have been paid by the United States," they shall constitute a mortgage upon the road. In the present predicament of the transaction, the Government is largely in advance for interest; and there at first appears to be no consideration received which should bind it to suffer a serious, if not disastrous loss. But if we reverse the condition of affairs it will be seen that a similar loss would fall upon the company, and a corresponding gain inure to the Government. That is to say, if the Government had required a larger amount of transportation, and the net earnings had greatly exceeded the reality, so that the two more than equaled the interest, then the company would be paying off the principal of its ultimate indebtedness to the Government long before the Government would be paying its debts to the bondholders. And as the company had mortgaged its road "to secure the repayment" "of the amount of said bonds," "together with all interest thereon which shall have been paid by the United States," a corresponding loss of interest upon interest would likewise fall upon it. Now, when the statute has provided two sources for the payment, not only of interest
78 but of a great deal more; that is to say, of a portion of the principa, before it becomes due, what reason can there be for the judiciary to interpolate, by mere construction, a third source into the statute? Assuredly none. If the statute had stopped with interest, and had provided that the remainder, if any, of the transportation-moneys and five per

centum should be paid to the company, there would be good reasons for saying that a reciprocal obligation was implied, and that the company should be held liable to make the interest-account whole. But, in the plight which Congress has placed the reciprocal and intermingling rights and interests of the parties, we perceive no reason why the Government should call the varying balance of its advances a liquidated present debt, subject to immediate collection.

But beyond the confines of all disputed construction, there remains one uncontroverted provision in the statute, which seems decisive of the legislative intent. The only party to whom an option was reserved by the act is the Government, and that option is the important right of making the company's services as little or as great as it pleases. If it requires these services, the company cannot withhold them; if it refuses all employment, the company cannot exact it. As the compact originally stood, the Government could keep down this interest without the expenditure of any ready money, by simply furnishing to the company this employment, and it might push the advantage to an unlimited extent, even to carrying the earnings of the road to the liquidation of the debt before it had matured. The subsequent statute, which substituted a half for the whole of the earnings, did not affect the legal import of the Government's reserved discretion, nor change the legal relations of the parties, nor vary the construction applicable to the original statute. It was an alteration in degree and not in kind, and still left the company, in this matter of service, entirely subject to the orders of the Government. In contemplation of law, the wrong and injury of which the Government complains are entirely of its own choosing. Courts of law cannot be invoked to aid persons where they themselves possess the means of redress. If an ordinary party were to come into another court with such a complaint, he would be told, "Either you have willfully withheld this employment from the other contractor, or you have been unable to furnish it to him. If the former supposition is the fact, then the fault is your own, and you cannot ascribe wrong to one whom you confess has always been willing to repay you in the manner which your agreement prescribes. If the latter is the fact, then, because the sources of payment which you provided disappoint you, and because the payment in kind which you elected to take gives you more of the transportation-service than you really require, you are trying to shift your loss to other shoulders than your own. Your misfortune is really this, that you made an improvident bargain."

The judgment of the court is that the claimant recover of the defendants the sum of $512,632.50, and that the counter-claim of the defendants be dismissed.

79 In the Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 9830.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General on behalf of the United States, for the allowance of an appeal, as filed in the clerk's office, July 8, 1875, and of the order of the chief-justice at chambers, allowing the same, of the findings of fact by the court, and the conclusions of law thereon; of the

request by claimant for an additional finding of fact, and the order thereon, and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-eighth day of August, A. D. 1875.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

(Indorsement on cover:) No. 571. The United States, appellants, vs. The Union Pacific Railroad Company. Court of Claims. Filed 4th September, 1874.

In the Supreme Court of the United States.

THE UNITED STATES, *Appellants*,
vs.
THE UNION PACIFIC RAILROAD COMPANY, *Respondents.*
No. 571.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

THE UNITED STATES, *Appellants*,
vs.
THE UNION PACIFIC RAILROAD COMPANY, *Respondents.*
No. 571.

BRIEF BY THE ATTORNEY GENERAL.

Appeal from a judgment of $512,632.50 *rendered by the Court of Claims.*

The suit is by a *private corporation* against the United States.

That the Union Pacific Railroad Company is a *private* corporation, hardly needs authority to decide.

R. R. Co. *vs.* Peniston, 18 Wal., 31.

Your final judgment in this case will determine the disposition of far more millions of money than were ever determined by any single judgment before, and the moral and political consequences which must follow will largely outweigh all the pecuniary considerations. MORE than two hundred million of dollars will be taken from the property of your fellow-citizens and transferred to the pockets of the stockholders of these roads, if you affirm the judgment below. More than two hundred million of dollars richer will be these favored corporations if you give the statutory constructions which they claim.

When the rubbish heaped upon this case is cleared away, the questions presented will appear few and very simple. The primal question is, whether the railroad company is bound to reimburse the interest as the the same falls due on the bonds borrowed from the Government, or whether the company may postpone the payment of the interest (*which the Government pays half-yearly*) until the maturity of the bonds at the end of thirty years. If this question is decided in favor of the Government, then the other questions dispose themselves in natural sequence and admit of no debate. But should the decision on the first question be adverse to the Government, then the only other question to be considered is whether the Government can retain ***all*** the earnings of the company earned in the service of the Government, or whether *one-half* of those earnings must be paid over to the road.

The Statutes to be considered by the Court run through four large volumns, and, for convenience, I have printed the necessary sections in the blue pamphlet before you, and to these laws, passed in 1862, 1864, 1871, and 1873, I invite your attention.

NOTE.—Read the Statutes in their order; and note especially the provisions about the "*ipso facto*" mortgage.

The consent filed by the company.

The right to retain the earnings.

The right to repeal.

The mortgage by the company, which was to be exactly like the "*ipso facto*" mortgage.

The fact that nothing was assented to by the company in consideration of these new privileges granted in 1864.

The provision that no *legal rights* of the Government should be impaired.

The directory act of 1871.

And the repealing act of 1873.

Brief History.

In 1862 Walter S. Burges, Benj. H. Cheever, Ben. Holliday, and their associates, obtained a charter from the United States to build the Union Pacific Railroad, and for that purpose they were created a body corporate with enormous grants and privileges—their end was private gain—the patriotism may be left out. To the gift of their invaluable franchise was added a principality of lands, the exclusive right to all the vast business of the Government, without the slightest discount from individual rates, besides some twenty-eight millions in Government bonds—more than enough to build every mile of the road—leaving this whole collossal power and unimagined wealth in the hands of a *private corporation;* a lasting monument of the lavish or the corrupt enrichment of private individuals at the expense of the public.

For all these advantages what did the Government require of this private corporation? That it should, by first mortgage of the road to the United States, secure the bonds issued; (section 5, act of 1862,) and section 6 of the act reads thus:

"That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity,

and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid, (at fair and reasonable *rates of compensation not to exceed the amounts paid by private parties for the same kind of service;) and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States*, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; *and after* said *road is completed*, until said bonds and interest are paid, *at least five per centum of the net earnings* of said road shall *also be annually* applied to the payment thereof.

"SEC. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning as herein provided, to the western boundary of Nevada Territory before the first day of July, one thousand eight hundred and seventy-four."

This princely donation was promptly accepted by the corporation and "their assent to this act" was duly filed in "the Department of the Interior," and thus the company generously agreed not to impose upon its munificent donor by charging the United States "higher rates than those paid by private parties for the same kind of service."

Perhaps this was regarded by the company as a *highly valuable consideration.*

The eighteenth section of the act provides that "Con-

gress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."

Two years went by; and emboldened by past success, and using means now known of all men, this corporation invaded and subjugated the Congress of the United States and procured the passage of the act of 1864, which grants very large additional donations and privileges besides. Sections 5 and 10 of the act of 1864 are as follows:

"SECTION 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing a map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be, and the same is hereby, extended one year from the time in said act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each year thereafter, and the whole to the State line within four years, and that only one half of the compensation for the services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads."

"SEC. 10. *And be it further enacted*, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, *issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time and maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively.* And the lien of the United

States bonds shall be *subordinate* to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the government of the United States. And said section is further amended by striking out the word 'forty' and inserting in lieu thereof the words 'on each and every section of not less than twenty.'"

The Court will not fail to note that this act of 1864, by which so much is given *without any consideration*, does not even require assent from the company or a promise not to impose upon the Government by exorbitant rates.

In 1870, Secretary Boutwell declining to pay for services while the company owed the United States for interest, the question was referred to the Attorney General, and he decided that under the law the company was not entitled to receive compensation from the United States for services while the interest paid on the bonds loaned by the Government had not been reimbursed.

The matter came before Congress, and in February, 1871, Senator Carpenter, from the Committee on the Judiciary, made a report to the Senate in which he says of the act of 1862, which created the corporation, as follows:

"The act is very carelessly drawn. By a literal construction the Government was only bound to issue its bonds for one section of forty consecutive miles. The fourth section, embodying the grant of lands, provides how patents shall be issued for the first section of forty miles, and then adds:

"'And patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners.'

"But this most important provision is wholly omitted in the fifth section, which provides for the issue of bonds to the company, as follows: 'That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said road and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of $1,000 each, * * to the amount of sixteen of said bonds per mile for such section of forty miles.' And there the provision stops, without authorizing an issue of bonds on the completion of any other section of said road. A strict construction of this act, and one far more reasonable than that which the Secretary of the Treasury now gives to the law in relation to services performed by the company for the Government, would make it difficult to justify that Department for having delivered bonds to the company, except for one section of forty miles, without resorting to other acts, which have probably cured this defect in the first act."

NOTE.—I quite agree with the Senator that "the act is very carelessly drawn," but when the whole act is taken together there is no difficulty in finding that the true construction gives to the company the bonds which they have received, without resorting to other acts to cure the defect.

I propose to apply the same rule of construction to the various acts which apply to this corporation.

Upon the report above mentioned, on the 3d of March, 1871, Statutes at Large, vol. 16, p. 525, sec. 9, Congress provided that "the Secretary of the Treasury is hereby directed to pay over in money to the Pacific railroad companies mentioned in said act, and performing ser-

vices for the United States, one-half of the compensation at the rate provided by law for such services, heretofore or hereafter rendered: *Provided, That this section shall not be construed to affect the legal rights of the Government or the obligations of the companies, except as herein specifically provided.*"

Time developed the fact that this great corporation was a fraud upon the public, and that the nation was taxed to pay the corporate spoliations, and in 1873 Congress awoke to the shame of taxing the people to enrich private corporations, and passed the act of March 3. (Statutes at Large, vol. 17, p. 508.) Section 2 reads:

"That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation, over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed together with the five per cent. of net earnings due and unapplied as provided by law; and any such company may bring suit in the court of claims to recover the price of such freight and transportation; *and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined*, and also *the rights of the United States upon the merits of all the points presented* by it in answer thereto by them and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business."

The act of 1862 created the corporation upon conditions which the company accepted, and *filed their assent* as provided by section 7—Congress reserving the power to *repeal, alter, or amend the act.*

The act of 1871 directed payment of one-half the amount earned for services rendered to the United States; but expressly provided "that this section *shall not be construed to affect the legal rights of the Government or the obligations of the company*," &c.

The act of 1873 directs the Secretary of the Treasury to withhold *all payments* for services of every kind to the amount of interest upon bonds of the United States issued to the company, which shall not have been reimbursed, together with the five per cent. of net earnings due; and remits all the rights and obligations of the corporation and of the United States to the courts, "*to be determined upon the merits of all the points presented.*"

THE ATTORNEY GENERAL submits:

First. That the plain meaning and intent of Congress is apparent from these four Statutes when construed together, and that the question remitted to the court is, whether the United States are entitled, under the charter which the company formally accepted, to retain the whole value of the services rendered the United States towards payment of the interest advanced by the Government upon the bonds loaned to the company; and it is further claimed by the Attorney General that, so far as this question might be embarrassed by the acts of 1864 and of 1871, these acts are repealed by the act of 1873.

NOTE.—The suit of the company is to recover for one-half the value of the services rendered, and the judgment below is for that only, but the counter claim set up by the Government was dismissed, and the whole

question of the liability of the company to pay the *interest* on the Goverment bonds before their maturity, at the end of *thirty years*, is fairly before the Court.

Second. That the Union Pacific Railroad Company is a *private corporation* has been settled; (The Company *vs.* Peniston, 18 Wal., 31;) and the principles of statutory construction, in a case like this, are well defined.

In the Ohio Life and Trust Company *vs.* Debolt, 16 Howard, 435, Chief Justice Taney says:

"The rule of construction, in cases of this kind, has been well settled by this Court. The grant of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. * * * Nor does the rule rest merely on the authority of adjudged cases. It is founded in principles of justice, and necessary for the safety and well being of every State in the Union. For it is a matter of public history, which this Court cannot refuse to notice, that almost every bill for the incorporation of banking companies, insurance and trust companies, railroad companies or other corporations, is drawn originally by the parties who are personally interested in obtaining the charter; and that they are often passed by the legislature in the last days of its session, when, from the nature of our political institutions, the business is unavoidably transacted in a hurried manner, and it is impossible that every member can deliberately examine every provision in every bill upon which he is called on to act. On the other hand, those who accept the charter have abundant time to examine and consider its provisions before they invest their money." * * * * *

"And if individuals choose to accept a charter in which the words used are susceptible of different meanings—or might have been considered by the representatives of the State as words of legislation only, and subject to future revision and appeal, and not as

words of contract—the parties who accept it have no just right to call upon this Court to exercise its high power over a State upon doubtful or ambiguous words, nor upon any supposed equitable construction or inferences made from other provisions in the act of incorporation."

See also Dubuque and Pacific Railroad Company *vs.* Litchfield, 23 How., 88, 89; and the Opinion of Attorney General Black, 9 Opinions of Attorneys General, 59, 60.

Third. That applying these, and other well-settled principles of construction, to the Statutes relating to this company, there is no difficulty in ascertaining their true intent and meaning—they are "*carelessly drawn*," as Senator Carpenter in his report justly says, but when all the parts are examined together, the purpose of Congress is entirely clear, from the language of the Statutes themselves.

Fourth. Take the act of 1862, which granted the charter:

"SEC. 5. *And be it further enacted*, That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, (*said interest payable semi-annually*,) which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile FOR SUCH SECTION OF FORTY MILES; and to secure the repayment to the United States, as hereinafter provided, of

the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, *the issue of said bonds and delivery to the company shall* IPSO FACTO *constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued.*"

There is nothing ambiguous about this: the Government proposed to advance its bonds to the company, bearing interest at six per cent., "*said interest payable semi-annually.*"

To secure these bonds *according to their terms*, and not otherwise, the company agreed by formal assent, (under sec. 7 of the act,) to give a first mortgage, and the mortgage was *executed* when the company received the bonds.

To illustrate: A banker of high credit loans his bond to a merchant of lesser credit, and the borrower of the bond agrees to give a mortgage upon his house to secure the bond; no one would doubt that the "*mortgage to secure the bond*" must be given in accordance with the *terms of the bond.*

No one would advocate the insane proposition that the merchant had complied with his contract by tendering a mortgage, with interest postponed thirty years, when the bond he borrowed paid interest half-yearly, though the bond itself ran thirty years before maturity.

Fifth. But the very next section not only proves that the company agreed to give a first mortgage to secure the bonds according to their tenor, but also agreed to give additional security for the *interest*, as well as the principal:

"SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall *pay said bonds at maturity*, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid, (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service;) *and all compensation for services rendered for the Government shall be be applied to the payment of said bonds and interest until the whole amount is fully paid.* Said company may also pay the United States, wholly or in part in the same or other bonds, treasury notes or other evidences of debt against the United States, to be allowed at par; *and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.*"

This removes all doubt as to the *agreement of the company* when it accepted this princely grant.

The formal acceptance, as required by section 7, was filed with the Secretary of the Interior June 26, 1863, and thus the compact was complete, and the "*rights* and the *obligations*" of the Government and the company were *fixed.*

Mr. A, of high credit in New York, owns 200 vacant lots: I propose that he *give* me 20 of those lots which I will build upon, and thus render his other lots more valuable; but having no money and no credit I propose that he issue two hundred bonds of $1,000 each, having 30 years to run, with interest at 6 per cent. payable

half-yearly, and that he advance me ten of these bonds as a house is enclosed upon each lot; "and to secure the repayment to Mr. A of the amount of said bonds so issued and delivered to Mr. P, together with all interest thereon which shall have been paid by Mr. A, I (Mr. P) will make a first mortgage on the whole of the said 20 lots and the houses erected thereon;" and I, being a lawyer, suggest to Mr. A, that in his vast business he needs frequent professional aid, which I will give at the same rates that I charge other people, and let "all compensation for services rendered for Mr. A be applied to the payment of said bonds *and interest* until the whole amount is fully paid;" "and that after said houses are complete, until said bonds *and interest* are paid, at least five per centum of the net rent of said houses *shall also* be annually applied to the payment thereof;" and I also agree that "I will keep the houses in repair and occupation and will render to Mr. A professional services when by him required in preference to others and at fair and reasonable rates, not to exceed the amounts paid by other parties for the same kind of service; and that I will pay said bonds at maturity."

We both sign the foregoing agreement, and, having received and sold $200,000 of Mr. A's bonds, he calls upon me for the promised mortgage—I offer him a mortgage bearing simple interest payable at the end of 30 years; Mr. A refuses to accept it as a compliance with the agreement, and it is submitted to this court to say whether the mortgage offered is a compliance with the terms of the contract. There could be no doubt about your Honors' decision.

The only possible difference is, that in the case before the Court the railroad is a *corporation*, contending with its creator, and as we have seen, in the opinion of this Court, delivered by Chief Justice Taney, that the construction of the statute should be much more severe against the corporation.

If this presents a sound view of the case, then the judgment for one-half the earnings is eminently absurd. It matters not how much the road has earned, if it owes the Government, for interest, ten times the amount of the earnings.

Sixth. The next step is to consider the act of 1864, by which, immense and new advantages and donations were bestowed upon the Company. By section 4 of this prodigal act, the "mineral land" reserved to the United States was declared "*not to include coal and iron land.*"

By section 5 the time was extended one year, and provided also "that *only one-half* of the compensation for services rendered for the Government by said company shall be required to be applied to the *payment of the bonds* issued by the Government in aid of the construction of said road."

By section 7 it is provided "that so much of section 17 of said (original) act as provides for a reservation by the Government of a portion of the bonds to be issued to aid in the construction of said road is hereby repealed."

By section 8 it is provided that bonds may issue when *only a part* of the work required by the charter is done.

Section 9 gives power to the company to construct bridges and establish ferries.

Section 10 allows the company to issue their first-mortgage bonds of *even tenor, date, maturity, interest, and amount with the Government bonds loaned,* "*and the lien of the United States bonds shall be subordinate to that of the bonds of the company.*"

Section 15 provides for consolidating roads, &c.

Section 18 provides that the United States shall extinguish Indian titles.

Section 19 provides for the issuing of patents.

The last section is as follows:

"*Congress may, at any time, alter, amend, or repeal this act.*"

NOTE.—By this act of free gifts, the company is required to assume nothing, do nothing, and assent to nothing, but the *absolute right* to amend or repeal is, ndeed, reserved.

Seventh. We next come to the act of March 3, 1871, entitled, "*An act making appropriations for the support of the Army for the year ending June* 30, 1872, *and for other purposes.*" This act is somewhat long, and at page 525, 16 Stat. at Large, will be found a little section, No. 9, in which are these words:

"The Secretary of the Treasury is hereby directed to pay over in money to the Pacific railroad companies mentioned in said act, and performing services for the United States, one-half of the compensation at the rate provided by law for such services, heretofore or hereafter rendered: *Provided*, That this section shall not be construed to affect the legal rights of the Government or the obligations of the companies, except as herein specifically provided."

This was passed just after Attorney General Akerman had decided that the Secretary was not authorized to pay the money.—(See Opinions, 13, 300.) It is true that the act provides that no construction shall be "given to that section which shall affect the *legal rights* of the Government or the *ob'igations* of the company." Of course, the Secretary began to pay the company as the Statute directed, and continued to pay the interest on the bonds loaned to the company. Two years sufficed to develop the iniquities which were perpetrated under cover of these Statutes, and Congress passed the act of March 3, 1873, above cited, by which the Secretary is forbidden to pay the company, and under which the whole question is remitted to the courts.—(Stat., 17, p. 508, sec. 2.)

Section 4 provides for bringing a suit in equity against this corporate absorber of the public property, which suit is now pending in this court.

By the bill filed, and by the public records, it appears that this corporation has received from the Government, besides the enormous grants of lands and other properties, franchises and privileges, TWENTY-SEVEN million two hundred and thirty thousand five hundred and twelve dollars ($27,230,512) in Government bonds; nine million of interest paid by the Government and not reimbursed or satisfied by any earnings of the company; that a mortgage of twenty-seven million two hundred and thirty-seven thousand dollars, ($27,237,000,) with interest payable half-yearly at six per cent., has been put upon the property of the company, and the proceeds realized; that a land-grant mortgage of $10,400,000, with interest at seven per

cent., payable half-yearly, has also been made by the company, and the bonds sold. That on the first day of September, 1869, the company issued its bonds—called income bonds—to the amount of ten million of dollars ($10,000,000,) with interest at *ten* per cent., payable half-yearly. The company has also issued what it calls "*bridge bonds*," to the amount of two million five hundred thousand dollars, ($2,500,000,) payable in gold, with interest half-yearly at the rate of eight per cent. per annum, and on the twelfth of December, 1872, the company ordered another mortgage of $16,000,000 to be made bearing interest at seven per cent. per annum; and that the stock issued is $36,762,300; and that there are numerous other outstanding obligations and contracts involving the company.

Eighth. The fact that the company, under the act of 1864, issued their mortgage to secure their bonds for the same amount as the Government advanced, and made the interest on said mortgage bonds payable *half-yearly*, is *conclusive* as to the understanding of the company when they filed their assent to the charter, and after issuing that mortgage in compliance with the Statute, it is discreditable to claim that they understood that the Government interest was not to be paid until the bonds matured.

The company gave their own construction, and proved their own understanding of the act of 1862, when they made their mortgage under the act of 1864, which expressly provided that their mortgage bonds should in tenor, date, interest, and in every respect be a counterpart of the Government bonds.

By section 5, act of 1862, and the assent filed, the railroad company agreed that the receipt of the Government bonds should "*ipso facto* constitute a first mortgage on the whole line of the railroad" to secure the bonds. To secure what bonds? Why, the bonds which the road received. And what bonds did the road receive? Bonds bearing interest at six per cent. *payable half-yearly*—not payable at the end of *thirty years*. The mortgage is to secure just these bonds according to their tenor, not some other bonds of entirely different tenor.

It requires no refinement of metaphysics to construe this Statute; common sense and common honesty is all that is needed.

If the bill had read that the mortgage given by the road to secure the Government bonds, whose interest was payable half-yearly, should be so construed as to allow the road to postpone all its interest until the end of thirty years, not an honest man in that entire Congress would have voted for it, and no reputable man believes that the bill could have received a single uncorrupted vote.

Had the corporators who, under this Statute, have received sixty-five million of Government bonds, bearing interest at six per cent., payable half-yearly, stated that they proposed to have the law so framed that, at the end of thirty years, the Government would have actually paid out three hundred and eighteen millions for interest, and that, at the end of the same period, the roads would only be bound to pay one hundred and seven teen millions of interest, the corruptest thief that ever polluted congressional halls would not have dared

to vote for it. The Statute has no such meaning; it can receive no such construction from this Court.

Ninth. But the claimants contend that "surrounding circumstances" may be considered in giving construction to the original grant; and the counsel ask how the road was to be built if the company were to pay interest on the bonds advanced by the Government? Why, just as every other railroad has been built; with this difference: that the Union Pacific Railroad Company actually received more from the Government than the fair cost of the whole road.

If one hundred men had obtained this invaluable franchise from the Government they could have issued stock, and from the proceeds of the stock, the sale of lands, land bonds, income bonds, and first-mortgage bonds they could have built the road, and, when built, they would have owned it. But in this case the company borrow from the Government the money and give a mortgage to secure the repayment at the end of thirty years with interest half-yearly; and to make the payments more easy the Government agrees to give the road all their business, to allow for the same full rates, and to let the company apply such earnings towards their indebtedness to the Government. These $28,000,000 which the Government has loaned to the company the Government has borrowed, and pays interest half-yearly at the rate of six per cent. per annum.

Every dollar of interest which the Government pays half-yearly it borrows, and pays for it also interest half-yearly at the same rate.

At the maturity of the bonds the Government pays thus, to wit	$28,000,000.00
Meanwhile the Government has paid interest	136,964,886.87
Then the Government will have paid	164,964,886.87

The company claims that, if it is bound to pay any interest at all, it is not due until the bonds mature, and, therefore, it will be bound to pay for the bonds	$28,000,000.00
And interest only at the end of thirty years	50,400,000.00
Thus the company will have paid but	78,400,000.00

But the Government will have paid for interest alone, $136,964,886.87; and, during all these thirty years, will also have been making constant cash payments at full rates for the company's services.

I think it safe to say that no such preposterous construction will be given to the statute by *this Court.*

NOTE.—This calculation, large as it seems, has been carefully made upon the $28,000,000 by two expert accountants in the Treasury, and is appended to this brief.

To the Union Pacific the Government advanced bonds (in round numbers) $28,000,000, and to this road, the Central, and branches together, $64,623,512. All are under the same Statutes, and all are involved in this suit.

Still refusing to pay to the Government some nine million of back interest, the company, last month, made a *quarterly* dividend of two per cent., and announced

in the public journals the expectation to continue to divide at this rate among its stockholders.

None of these considerations are entitled to any weight with the Court if it is plain that the laws of Congress make it your duty to affirm this judgment; but all of these considerations are important in determining the true intent and just construction of the Statutues now under your judicial scrutiny.

Never did a suit come before a judicial tribunal involving such vast interests as this. The results of your Honor's determination of the present controversy do not end here. This company owns but one part of the great Pacific road. The Central Pacific is of about equal length, and to these roads and their branches the Government has already advanced $64,623,512 in bonds bearing half-yearly interest. If this judgment is sustained, before a single generation shall have passed the Government will have paid for these companies $318,035,714 in interest alone, less only one-half the charges for services, the other half being paid by the Government besides, while the people suffer and industry is paralyzed by the heavy taxes imposed to enrich the favored recipients of these public bounties.

Say what you will, the millions which the Government bestows upon the pampered favorites of these roads are wrung from the rest of the people.

Suppose two hundred rich men had accepted the charter of the Union Pacific road, and, out of the sale of lands, the sale of stock, the proceeds of income and mortgage bonds, and their own resources, had built this road and held for themselves the $28,000,000 of of Government bonds issued, and had received the interest half-yearly from the Government, besides cash

for one-half the estimate of their services, and it was understood that for *interest alone*, paid to the owners of the road, the Government would have advanced, at the end of thirty years, $136,964,886, (lessened only by one-half the charges for services,) every dollar of which must come from taxes upon the people. Would it be believed that *any* Congress of the United States ever intended to perpetrate such an infamy, or that even the Union Pacific Company itself was aware of such an intended fraud upon the public when it accepted the charter?

Tenth. It was urged below that it would be oppressive to retain all the earnings for services to the Government and apply them towards the payment of the indebtedness of the company, because these services *might* amount to more than the interest in some possible future. Suppose it did? All the better for the company; it would then be allowed interest on the surplus, and, at full rates for services, it would be paying off its debt through the very business which the Government gave it.

But when the company shall have paid the Government the $9,000,000 for interest which it now owes, and its indebtedness of some sixteen hundred and eighty thousand dollars ($1,680,000) *annually* accruing besides, there will be time enough to discuss this hardship.

Eleventh. The learned counsel below referred to the debates in Congress to support his construction of the Statutes. It has been often held that such debates could have no just influence.

Eldridge *vs.* Williams, 3 Howard, 1.
6 Opinions, (Cushing,) 464.
9 Opinions, (Black,) 57.

But the debate cited, when it is taken entire, proves the very contrary to that for which it is cited. The citation of the learned counsel begins with the words "It is not supposed," whereas the full report of Mr. Campbell's statement is as follows:

"Mr. CAMPBELL. I suppose, of course, that the gentleman from Indiana is acting in perfect good faith; but I am clearly of opinion that the gentleman has not studied faithfully the provisions of this bill. It has been demonstrated to this House that the cost to the Government of transportation to our forts in the Territories is more than double the amount of the entire interest upon all the bonds proposed to be issued; *and the bill is based upon the supposition that the transportation of Government supplies over the road will be equal to, if not greatly exceed, the annual interest upon the bonds issued from year to year. It is the intenti n of the bill that the interest shall be paid semi-annually to the Government.* It is not supposed that, in the first instance, the company will reimburse the interest to the Government.

It will reimburse it in transportation; but if the transportation does not meet the interest, then the Government is to have a mortage on the entire road for the full amount of principal and interest. I hope, therefore, that the amendment will be voted down."

"Mr. WHITE'S amendment was rejected."

58 Congressional Globe, (1861–'62,) 1911.

Twelfth. Those parts of the acts of 1864 and 1871 which directed payment, without consideration, of one-half the earnings above mentioned are clearly repealed by the act of 1873, and it is now left to this Court to say, What are the "*legal rights and obligations*" of the Government and the corporation under the charter which the company *accepted* and the law as it *now* stands.

In the brief of the eminent counsel, *Mr. Bartlett*, filed in the court below, and which, I cannot doubt, had great influence with the court, is the following:

"It is further manifest from the record of the proceedings of Congress when the act was passed that the effect of these provisions was to defer the repayment of the interest by the company until the maturity of the bonds was brought to its notice. Perhaps legislative debates accompanying the passage of a law are not technically admissible upon the question of its construction; however this court may hold on this point, we submit copies of a portion of the legislative record of both Senate and House *valeat quantum*. The former is to be found in the report of the Senate Judiciary Committee, which is appended hereto; the latter is as follows:

[*Congressional Globe, Part* 2, 1861–2, *p.* 1911.]

"Mr. WHITE, of Indiana, thus presented the question:

"It will be observed, by reference to the section, that there is no provision in reference to the payment of the current interest. I therefore move to amend by adding to the section the following:

"'*It is declared to be the true intent and meaning of this section* that the current interest on said bonds shall be chargeable to said company, to be by them reimbursed to the United States, within one month after each semi-annual payment thereof by the United States; and a default therein shall subject the said company to the same liability and forfeiture above provided for in case of the non-redemption of the bonds at their maturity.'

"The section, as it now stands, does not make any provision for the payment of the current interest as it accrues semi-annually. It may or may not have been the intention of the committee that the interest should be paid by the company. Probably it was; but if not, then this amendment, of course, will involve a principle which the committee have not sanctioned. If it

was the intention of the committee—and it is the intention of the Committee of the Whole—that the railroad company shall pay the current interest, then, to avoid the difficulty and uncertainty which creditors will have, and to insure its prompt payment by the United States, this amendment provides that the Government shall first pay it, and the company reimburse it to the United States within one month. Of course it will be a little gain to the company to the extent of the interest upon the interest. This is the only way the interest can be promptly secured to the creditors.

"Mr. CAMPBELL, after alluding to the cost of Government transportation exceeding the interest on the bonds proposed to be issued, in closing his reply, said: 'It is not supposed that, in the first instance, the company will reimburse the interest to the Government. It will reimburse it in transportation; but, if the transportation does not meet the interest, *then the Government is to have a mortgage on the entire road for the* FULL *amount of principal and interest.* I hope, therefore, that the amendment will be voted down.

"Mr. WHITE'S amendment was rejected."

Deeply impressed with the belief that no honest man ever could have voted for the bill if he had, for a moment, supposed that the interest paid half-yearly by the Goverment was to be postponed *thirty years* by the company, I carefully examined the debates cited by the learned counsel, and find that he quite forgot to quote the part which throws the true and perfect light upon the understanding of Congress as expressed by Mr. Campbell, who was in charge of the bill. My learned friend's citation begins at the end, and does not fairly represent the true import of what Mr. Campbell said.

These are his words:

"Mr. CAMPBELL. I suppose, of course, that the gentleman from Indiana is acting in perfect good faith;

but I am clearly of opinion that the gentleman has not studied faithfully the provisions of this bill. It has been demonstrated to this House that the cost to the Government of transportation to our forts in the Territories is more than double the amount of the entire interest upon all the bonds proposed to be issued; *and the bill is based upon the supposition that the transportation of Government supplies over the road will be equal to, if not greatly exceed, the annual interest upon the bonds issued from year to year. It is the intention of the bill that the interest shall be paid semi-annually to the Government.* It is not supposed that, in the *first instance*, the company will reimburse the interest to the Government. It will reimburse it in transportation; but if the transportation does not meet the interest, then the Government is to have a mortgage on the entire road for the full amount of principal and interest. I hope, therefore, that the amendment will be voted down.

"Mr. WHITE'S amendment was rejected."

58 Congressional Globe, (1861–'62,) 1911.

Mr. White's amendment proposed that the road should be compelled to pay the interest within thirty days (*not thirty years*) after the Government had advanced it.

Mr. *Campbell*, in charge of the bill, openly on the floor of Congress said:

"I am clearly of opinion that the gentleman has not studied faithfully the provisions of this bill. * * * *It is the intention of the bill that the interest shall be paid* SEMI-ANNUALLY *to the Government.*"

Of course Mr. White's amendment was voted down.

This, to quote from the opinion of the Judge below, "*seems decisive of the legislative intent.*"

EDWARDS PIERREPONT,

Attorney General.

DEPARTMENT OF JUSTICE,
Washington, September 20, 1875.

Will the Secretary of the Treasury submit this problem to some two *reliable* accountants who will *accurately* solve it for the ATTORNEY GENERAL:

PROBLEM.

On the Government loans of January 1, 1870, of $28,000,000, to the Union Pacific road, what amount of interest will the Government have paid at the end of thirty years when the loan matures?

NOTE.—The Government borrows whatever it pays. What will be its *interest* debt on this $28,000,000 when the loan matures, at the end of thirty years? The interest is six per cent., payable half-yearly.

EDWARDS PIERREPONT,
Attorney General.

Loan of January 1, 1870—$28,000,000—Interest Account.

1870—July 1. First payment	Six months' interest on $28,000,000			$840,000 00
1871—Jan. 1. Second payment	Six months' interest on principal	$840,000 00		
	Six months' int. on first payment	25,200 00		
			865,200 00	
				1,705,200 00
July 1. Third payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	51,156 00		
			891,156 00	
				2,596,356 00
1872—Jan. 1. Fourth payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	77,890 68		
			917,890 68	
				3,514,246 68
July 1. Fifth payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	105,427 40		
			945,427 40	
				4,459,674 08
1873—Jan. 1. Sixth payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	133,790 22		
			973,790 22	
				5,433,464 30

July 1. Seventh payment.....	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	163,003 93		
			1,003,003 93	
				6,436,468 23
1874—Jan. 1. Eighth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	193,094 05		
			1,033,094 05	
				7,469,562 28
July 1. Ninth payment.....	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	224,086 87		
			1,064 086 87	
				8,533,649 15
1875—Jan. 1. Tenth payment	Six months' interest on principal...	840,000 00		
	Six months' int on former paym'ts.	256,009 47		
			1,096,009 47	
				9,629,658 62
July 1. Eleventh payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	288,889 76		
			1,128,889 76	
				10,758,548 38
1876—Jan. 1. Twelfth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	322,756 45		
			1,162,756 45	
				11,921,304 83

Loan of January 1, 1870—$28,000,000—*Interest Account*—Continued.

1876—July 1. Thirteenth payment	Six months' interest on principal...	$840,000 00		
	Six months' int. on former paym'ts.	357,639 14		
			$1,197,639 14	
				13,118,943 97
1877—Jan. 1. Fourteenth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	393,568 32		
			1,233,568 32	
				14,352,512 29
July 1. Fifteenth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	430,575 37		
			1,270,575 37	
				15,623,087 66
1878—Jan. 1. Sixteenth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	468,692 63		
			1,308,692 63	
				16,931,780 29
July 1. Seventeenth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	507,953 41		
			1,347,953 41	
				18,279,733 70
1879—Jan. 1. Eighteenth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	548,392 01		
			1,388,392 01	
				19,668,125 71

July 1. Nineteenth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	590,043 77	
			1,430,043 77
			21,098,169 48
1880—Jan. 1. Twentieth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	632,945 08	
			1,472,945 08
			22,571,114 56
July 1. Twenty-first payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	677,133 44	
			1,517,133 44
			24,088,248 00
1881—Jan. 1. Twenty-second payment .	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	722,647 44	
			1,562,647 44
			25,650,895 44
July 1. Twenty-third payment ...	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	769,526 86	
			1,609,526 86
			27,260,422 30
1882—Jan. 1. Twenty-fourth payment ..	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	817,812 67	
			1,657,812 67
			28,918,234 97

Loan of January 1, 1870—$28,000,000—*Interest Account*—Continued.

1882—July 1. Twenty-fifth payment. ..	Six months' interest on principal...	$840,000 00		
	Six months' int. on former paym'ts.	867,547 05		
			$1,707,547 05	
				30,625,782 02
1883—Jan. 1. Twenty-sixth payment...	Six months' interest on principal ..	840,000 00		
	Six months' int. on former paym'ts.	918,773 46		
			1,758,773 46	
				32,384,555 48
July 1. Twenty-seventh payment.	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	971,536 66		
			1,811,536 66	
				34,196,092 14
1884—Jan. 1. Twenty-eighth payment..	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	1,025,882 76		
			1,865,882 76	
				36,061,974 90
July 1. Twenty-ninth payment...	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	1,081,859 25		
			1,921,859 25	
				37,983,834 15
1885—Jan. 1. Thirtieth payment	Six months' interest on principal...	840,000 00		
	Six months' int. on former paym'ts.	1,139,515 02		
			1,979,515 02	
				39,963,349 17

July 1. Thirty-first payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts	1,198,900 48	
			2,038,900 48
			42,002,249 65
1886—Jan. 1. Thirty-second payment...	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,260,067 49	
			2,100,067 49
			44,102,317 14
July 1. Thirty-third payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,323,069 51	
			2,163,069 51
			46,265,386 65
1887—Jan. 1. Thirty-fourth payment ...	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,387,961 60	
			2,227,961 60
			48,493,348 25
July 1. Thirty-fifth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,454,800 45	
			2,294,800 45
			50,788,148 70
1888—Jan. 1. Thirty-sixth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,523,644 46	
			2,363,644 46
			53,151,793 16

Loan of January 1, 1870—$28,000,000—*Interest Account*—Continued.

1888—July 1. Thirty-seventh payment ..	Six months' interest on principal...	$840,000 00	
	Six months' int. on former paym'ts.	1,594,553 79	
			$2,434,553 79
			55,586,346 95
1889—Jan. 1. Thirty-eighth payment ...	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,667,590 41	
			2,507,590 41
			58,093,937 36
July 1. Thirty-ninth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,742,818 12	
			2,582,818 12
			60,676,755 48
1890—Jan. 1. Fortieth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,820,302 66	
			2,660,302 66
			63,337,058 14
July 1. Forty-first payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,900,111 74	
			2,740,111 74
			66,077,169 88
1891—Jan. 1. Forty-second payment....	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	1,982,315 10	
			2,822,315 10
			68,899,484 98

July 1.	Forty-third payment	Six months' interest on principal...	840,000 00	
		Six months' int. on former paym'ts.	2,066,984 55	
				2,906,984 55
				71,806,469 53
1892—Jan. 1.	Forty-fourth payment	Six months' interest on principal...	840,000 00	
		Six months' int. on former paym'ts.	2,154,194 09	
				2,994,194 09
				74,800 663 62
July 1.	Forty-fifth payment	Six months' interest on principal...	840,000 00	
		Six months' int. on former paym'ts.	2,244,019 91	
				3,084,019 91
				77,884,683 53
1893—Jan. 1.	Forty-sixth payment	Six months' interest on principal...	840,000 00	
		Six months' int. on former paym'ts.	2,336,540 51	
				3,176,540 51
				81,061,224 04
July 1.	Forty-seventh payment...	Six months' interest on principal...	840,000 00	
		Six months' int. on former paym'ts.	2,431,836 72	
				3,271,836 72
				84,333,060 76
1894—Jan. 1.	Forty-eighth payment....	Six months' interest on principal ..	840,000 00	
		Six months' int. on former paym'ts.	2,529,991 82	
				3,369,991 82
				87,703,052,58

Loan of January 1, 1870—$28,000,000—*Interest Account*—Continued.

1894—July 1. Forty-ninth payment	Six months' interest on principal	$840,000 00		
	Six months' int. on former paym'ts.	2,631,091 58		
			$3,471,091 58	
				91,174,144 16
1895—Jan. 1. Fiftieth payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	2,735,224 32		
			3,575,224 32	
				94,749,368 48
July 1. Fifty-first payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	2,842,481 05		
			3,682,481 05	
				98,431,849 53
1896—Jan. 1. Fifty-second payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	2,952,955 49		
			3,792,955 49	
				102,224,805 02
July 1. Fifty-third payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	3,066,744 15		
			3,906,744 15	
				106,131,549 17
1897—Jan. 1. Fifty-fourth payment	Six months' interest on principal	840,000 00		
	Six months' int. on former paym'ts.	3,183,946 48		
			4,023,946 48	
				110,155,495 65

July 1. Fifty-fifth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	3,304,664 87	
			4,144,664 87
			114,300,160 52
1898—Jan. 1. Fifty-sixth payment.....	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	3,429,004 82	
			4,269,004 82
			118,569,165 34
July 1. Fifty-seventh payment...	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	3,557,074 96	
			4,397,074 96
			122,966,240 30
1899—Jan. 1. Fifty-eighth payment....	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	3,688,987 21	
			4,528,987 21
			127,495,227 51
July 1. Fifty-ninth payment	Six months' interest on principal...	840,000 00	
	Six months' int. on former paym'ts.	3,824,856 83	
			4,664,856 83
			132,160,084 34

Loan of January 1, 1870—$28,000,000—*Interest Account*—Continued.

1900—Jan. 1. Sixtieth payment	Six months' interest on principal...	$840,000 00		
	Six months' int. on former paym'ts.	3,964,802 53		
				$4,804,802 53
Amount due on interest account at maturity of Loan				136,964,886 87

E. B. ELLIOTT,
Bureau of Statistics, Treasury Department.
WM. F. MACLENNAN,
Warrant Division, Treasury Department.



Supreme Court of the United States.

THE UNITED STATES, Appellant,

vs.

THE UNION PACIFIC RAILROAD COMPANY.

SUPPLEMENTAL BRIEF FOR THE APPELLEE.

Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE UNION PACIFIC RAILROAD COMPANY.

SUPPLEMENTAL BRIEF FOR THE APPELLEE.

There are, seemingly, but two general questions to be argued. Both lie within a narrow compass, and so, notwithstanding the magnitude of the interests involved, will not require a lengthened discussion. They are—

1. Has the Government, under the provisions of the charter, in terms or by necessary legal implication, any present, immediate claim against the Union Pacific Railroad for reimbursement of the interest paid by it on its bonds issued to that corporation, and which it can enforce by action of contract or set-off? If it has not, the attempted set-off must be rejected and the judgment appealed from be confirmed.

2. If, in terms or by legal implication, such immediate right to reimbursement, action or set-off would otherwise exist, has not Congress, by the charter, contracted not to use such claim or right as a set-off, either in form or effect, against one-half the sums that may be earned and due to the corporation for services in transportation described in the Act?

If such is the contract the corporation must recover, leaving government to enforce its claim, either in the methods pointed out by the charter or (if it has the election) by suit at law.

I.

The ground on which the asserted existence of a present, immediate right in the Government to reimbursement of the

interest paid by it will be found to rest, not upon any distinct provision of the charter to that effect, but upon an implied assumpsit or covenant based on a construction to be put on one or more of its clauses, leading, as it is said, by necessary legal implication, to that result.

This makes it necessary to advert to the settled principles of construction adopted by this Court in relation to endowments, by the Government, of individuals or corporations. We concede that, in all charters whose entire purpose and effect is to confer bounties on corporations, in consideration of advantages to the general public, the indisputable rule is, that in case of doubt, the construction is to be in favor of the Government. But governments, like individuals, must make numerous contracts in the course of administration, founded on the consideration of reciprocal agreements for services or duties made by those with whom they contract, or securing the same by conditions and forfeitures, the performance of which is to inure to the direct pecuniary benefit of the Government itself, as distinguished from imputed benefits to the public at large under charters of mere endowments. To such classes of contracts the rule of construction before stated would seem to have no application, unless, indeed, all mere contracts by governments with individuals are to be governed, as to their construction, by rules not applicable to all other contracts.

That the rule, as first stated, must be confined to charters making mere endowments, with no stipulations for services or for pecuniary returns by the party endowed, would seem to be clear on reference to the leading cases in this Court and the grounds on which the rule is there rested.

> Charles River Bridge *vs.* Warren Bridge, 11 Peters, 420.
> Ohio L. & T. Co. *vs.* Debott, 16 How., 435, 436.
> Dubuque & P. R. Co. *vs.* Litchfield, 23 How., 88, 89.

That the charter of the Union Pacific Railroad Company contains stipulations for services, priorities, and pecuniary advantages secured to the Government, either by condition

or contract, is recognized in the title and throughout the Act of 1862, and cannot be controverted.

II.

We come, then, to a scrutiny of the charter, and especially of the portions thereof relied on by the Government, as showing that, by necessary construction or by legal implication, the right exists to have and enforce, either by action at law or set-off, the immediate reimbursement of interest paid by it.

It is believed that the following are the only sections of the charter which have any direct bearing upon the question at issue.

Act, July 1, 1862, 12 Stat. at Large, p. 489.

"SEC. 5. *And be it further enacted*, That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this Act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum interest (said interest payable semi-annually), which interest may be paid in United States treasury notes, or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and *to secure the repayment to* the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and, in consideration of which, said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, *when required so to do by the Secretary of the Treasury*, in accordance with the provisions of this Act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: *Provided*, this section shall not apply to that part of any road now constructed."

"SEC. 6. *And be it further enacted*, That the grants aforesaid are made "upon condition that said company shall pay said bonds at maturity, and "shall keep said railroad and telegraph line in repair and use, and shall at "all times transmit dispatches over said telegraph line, and transport "mails, troops, munitions of war, supplies, and public stores upon said "railroad for the government, whenever required to do so by any depart- "ment thereof, and that the government shall at all times have the prefer- "ence in the use of the same for all the purposes aforesaid (at fair and "reasonable rates of compensation, not to exceed the amounts paid by "private parties for the same kind of service); and all compensation for "services rendered for the government shall be applied to the payment of "said bonds and interest until the whole amount is fully paid. Said com- "pany may also pay the United States, wholly or in part, in the same or "other bonds, treasury notes, or other evidences of debt against the "United States, to be allowed at par; and after said road is completed, "until said bonds and interest are paid, *at least* five per centum of the net "earnings of said road shall also be annually applied to the payment "thereof."

"SEC. 17. *And be it further enacted*, That in case said company or com- "panies shall fail to comply *with the terms and conditions* of this Act, by "not completing said road and telegraph and branches within a reason- "able time, or by not keeping the same in repair and use, but shall permit "the same for an unreasonable time to remain unfinished or out of repair "and unfit for use, Congress may pass any Act to insure the speedy comple- "tion of said road and branches, or put the same in repair and use, and may "direct the income of said railroad and telegraph line to be thereafter devoted "to the use of the United States, to repay all such expenditures caused by "the default and neglect of such company or companies: *Provided*, That if "said roads are not completed, so as to form a continuous line of railroad, "ready for use, from the Missouri River to the navigable waters of the "Sacramento River, in California, by the first day of July, eighteen hun- "dred and seventy-six, the whole of all said railroads before mentioned, "and to be constructed under the provisions of this Act, together with all "their furniture, fixtures, rolling stock, machine shops, lands, tenements, "and hereditaments, and property of every kind and character, shall be "forfeited to and be taken possession of by the United States."

Act July 2d, 1864, 13 Stat. at Large, p. 356.

"SEC. 5. *And be it further enacted*, That the time for designating the "general route of said railroad, and of filing the map of the same, and the "time for completion of that part of the railroads required by the terms "of said act of each company, be, and the same is hereby, extended one "year from the time in said act designated; and that the Central Pacific "Railroad Company of California shall be required to complete twenty- "five miles of their said road in each year thereafter, and the whole to the "state line within four years, and that only one half of the compensation

"for services rendered for the government by said companies shall be re-
"quired to be applied to the payment of the bonds issued by the govern-
"ment in aid of the construction of said roads."

III.

Under these provisions, we submit that, neither in terms nor by legal construction, is there contained in them any expressed or implied assumpsit or covenant by the corporation *on which by action at law or set-off*, Government can compel the company to reimburse either the principal or the interest of the bonds issued by it.

Let it be noted, we do not claim that the Government is not to be reimbursed both principal and interest, nor that such reimbursement is not secured to it by the charter. Our position is, that whensoever the duty of reimbursement arises, then the remedy is not by assumpsit or contract; and that, as the set-off is based upon such assumpsit, if we are right, it must fail.

We further submit, that, rightly construed, the charter provides for a gradual reimbursement during the period in which the several bonds (whose maturities were to be scattered all over a period of thirteen years) are running to maturity, by the application of sums due from the Government from time to time, for services, and by "at least" five per cent of the net earnings of the company, and that payment of the balance, if any shall be found due on each bond as it matures, is secured, not by its being the subject of an action at law on assumpsit or covenant, but by a summary forfeiture or special foreclosure without the intervention of any court.

Under this view, the first step is to find if, by legal construction or implication, any assumpsit or covenant to reimburse the Government exists.

1st. If the transaction were a mere loan of money by the Government, the law would doubtless imply a promise to repay it. But this was no loan of anything. It was a

grant and issue of bonds payable at distant periods. By the same charter there is a large grant also of lands for the same expressed purpose. Any implied assumpsit or covenant to reimburse or pay the value, is as applicable to the one as to the other. Whatsoever obligation, therefore, rests upon the Company as to either grant, is dependent wholly upon its distinct provisions, and not upon implication. If there be no such expressed provision, both the grants would be a gift merely, in aid of a public enterprise.

2d. We must turn then to the provisions of the charter to find if any of them legally import a covenant or assumpsit on the part of the Company to reimburse the Government.

Now, throughout the charter, the provisions to protect the Government, we submit, are in clear terms, either indisputable common law, strict conditions, or a mortgage which is shaped as a strict condition, allowing no equity of redemption, but providing a mere summary forfeiture.

Thus, by the 17th section, failure to complete the road by the first of July, 1876 (extended one year by the Act of 1864), "the road and all its hereditaments and property of every kind and character shall be forfeited to, and taken possession of, by the United States"; and by the same section unreasonable delay in construction, or omission to keep in repair, is to be redressed, not by action at law, but by taking possession.

The mortgage, (sec. 5), also, is without any equity of redemption and with its summary foreclosure.

3d. The only provision of the charter, on which, seemingly, an argument can be based to show that there was created an assumpsit or covenant by the Company to pay the bonds and interest, is contained in the 6th section, and we again extract the portion of it which raises the question.

"The grants aforesaid are made *upon condition* that said company shall "pay said bonds at maturity, and shall keep said railroad and telegraph "line in repair and use, and shall at all times transmit dispatches over "said telegraph line, and transport mails, troops, and munitions of war, "supplies and public stores, upon said railroad for the government, when-

"ever required to do so by any department thereof, and that the govern-
"ment shall at all times have the preference in the use of the same for all
"the purposes aforesaid."

Now, are those words, "the grants aforesaid are upon condition," to be construed in their natural sense and in accordance with the scheme of the Government, apparent throughout the Act, to enforce its rights by condition of forfeiture, or are they to be held as implied covenants or assumpsits by the Company to pay said bonds and interest as they mature?

Of course they cannot be construed as a technical covenant.

The charter is in its character a deed poll, and the grantees are recipients and not parties to execute it. The argument must be that acceptance implies an assumpsit to perform the conditions.

Let us not be misunderstood. We have no doubt that when a charter grants powers which, if acted upon, are to carry with them duties; and, if the performance of those duties is secured, not by making the same the subject of condition and forfeiture, but by a declaration in the charter, "that it shall be the duty," or, "it shall be lawful for the Company and they are hereby required," such duties can be enforced by mandamus and possibly by bill, but not by assumpsit or action of contract.

York & N. M. Ry. Co. *vs.* Regina, 18th English Law & Equity, p. 199.
Great West. R. R. Co. *vs.* Regina, 18th English Law & Equity, p. 211.

We admit, also, that in a deed poll, where the context requires it, the Court will construe the words "on condition," not in their common law sense, but to "create a trust which "those who take the estate are bound to perform, and in case "of a breach, a court of equity will interpose and enforce per-"formance," as is settled by this Court in regard to the word "provided," in Stanley *v.* Colt (5th Wall., 119–165).

But this by no means leads to the result that all the acts to be performed may be enforced at law by an action of contract.

In this case, the acts to be secured by the condition are not the mere payment of money, but the performance of constantly recurring services and duties, and it cannot be held that it was the design to enforce each of those acts by suit at law, or that one of them is to be the subject of such suit, and that all the others are common law conditions. Nor is there any reason why payment of money should not, like the other duties, be the subject of condition.

We need not add that the clause cannot be construed both as a condition and a contract, since in legal construction they are repugnant,—the latter annihilates the former.

The true question is, Did the Government, when it used this language, "that the grants aforesaid are made upon "condition," &c., mean to hold over the Company, in order to ensure a punctual performance of the prescribed duties, the penalty of forfeiture, or did it mean to rely on suits at law to enforce those duties, most of which, if performance were refused, would involve ("particularly in times of war" as set out in the 18th section) immediate consequences too important to be left for redress to protracted litigation? The duty to reimburse the Government stands by the clause in the same category with the other duties which are made the subject of the condition and cannot be severed from them.

It will be noted that the performance of no one of the duties embraced by this condition (except the repayment of the Bonds, which was secured by mortgage), had been in any other part of the Act in any manner secured the Government, vital as such security was to its interests. The mortgage seemingly covered the [redacted] only. The clause in question was apparently designed to make certain the performance of each and all the other duties, none of which were already secured by holding over the Company forfeiture of all its property or possessions in case of neglect or refusal. And it may be proper to add that, in case of mortgage where there has been no bond, note, or covenant to pay, no suit for the mortgage money can be maintained.

Drummond, Admr. *vs.* Richards, 2 Mumford, p. 337.
1st Powell, Mort., p. 60., Note A.

IV.

It has been submitted that not only is there no expressed or implied contract to reimburse the Government its payments either of Bonds or interest, but farther, that the charter is framed with the purpose of providing for the gradual reimbursement of both principal and interest up to the period of the maturity of each Bond, and that the enforcement of the balance, if any, of such Bond or class of Bonds as they mature, with interest, was designed to be attained by a summary forfeiture or foreclosure of the Company's all in case of neglect.

The ground on which this position rests, will, to save repetition, be presented in discussing the following less comprehensive proposition, namely:

If any implied or expressed assumpsit or covenant to reimburse the Government its payments, either of principal or interest, can be found in the Charter, then we submit that it is clear that the assumpsit or covenant to pay the interest is to pay the same as each and every Bond or class of Bonds matures, and not from time to time, each six months, as it shall have been paid by the Government.

1st. It is proposed to discuss this question by a scrutiny of every clause of the Charter which provides, either directly or by implication, *the time or period* at which either Bonds or interest are to be reimbursed to the Government.

2d. To examine the clauses that regulate *the mode* of such reimbursement, with a view to determine whether that mode does or not concur with the legal interpretation given to the clause which fixes the time or period of payment, and thus settles that interest was designed to be only payable at the maturity of each Bond or class of Bonds.

3d. To show, from the surrounding circumstances, that this just interpretation of the Act concurs with, nay, is imperatively demanded, in view of the improbability if not impossibility of otherwise accomplishing a great public enterprise, by inducing adventurers to embark in it, which was its sole purpose.

V.

We come, then, to an analysis of the charter to find what are its expressed or implied provisions as to *the time or period* at which the interest was to be reimbursed to the Government.

1st. The earliest clause is the mortgage clause set out in section 5th, which contains two provisions,—neither of which fixes in terms the period at which either Bonds or interest are to be reimbursed to the Government.

The first clause declares that the amount of both Bonds and interest shall be paid "*as hereinafter provided.*"

The second clause provides for such payment "*when re-*"*quired so to do by the Secretary of the Treasury* in accordance "with the provisions of this Act."

Of itself, this last clause would tend to the construction that neither payment of principal or interest was to be made as it accrued, in default of which, forfeiture or foreclosure is to follow, as in common mortgages, but that, for some purpose or for some reason, the period of reimbursement was to be fixed by the Secretary of the Treasury, and thereupon demand to be made by him.

But postponing for the present the consideration of the effect of this last clause, and referring solely to the first one, it is clear, either that the time of payment is to be "as hereinafter provided," or that the mortgage strangely fixes directly no time of payment. Resort then must be had to the subsequent provisions to find if in either of them the time of payment is "hereinafter provided," and the only one which expressly refers to the time of payment, is the next or the 6th section. The words of that section are the "grants "aforesaid are made on condition that the Company shall "*pay said Bonds at maturity.*"

Now, literally, this provision is confined to the Bonds merely, and construing, as the Court is, a clause involving forfeiture of franchise and property, it may be open to contest whether interest was embraced by its terms. But assuming as we do, that by just construction, interest is to be

reimbursed, does the clause fix the time of reimbursement, as being any other than the maturity of the Bonds? Will the law, under such circumstances, import into the Act the words, "and each semi-annual payment of interest as it accrues?" If such had been the purpose, why was it not so plainly stated? Why was it left to inference merely, from the words "pay said Bonds at maturity"? One thing would seem clear from the terms used, namely, that whatsoever payment was to be made, *the period of such payment is definitely fixed* as the maturity of the Bonds, and if words are to be interjected so as to include interest, why should there be made by them a further alteration by the insertion of a new and different period for its payment?

We submit that upon any just construction both interest and principal must, under this clause, be held to be payable only at the maturity of the Bonds, even if the subsequent provisions as to *the mode of payment* were not decisive on this question.

2d. It is believed that the above clauses are the only portions of the Charter that refer in terms to *the time* of the reimbursement of either Bonds or interest, and we turn next to the clauses which provide for *the mode of payment*, either partial or entire, according to the sufficiency of the means to which they refer.

They are to be found in part of a clause of the 6th section, and are as follows:

> "All compensation for services rendered for the government shall *be* "*applied* to the payment of said bonds and interest until the whole amount "is fully paid; * * * * and after said road is completed, until said "bonds and interest are paid, at least five per centum of the net earnings "of said road shall *also be annually applied* to the payment thereof."

Now, if it were possible to construe these clauses as a mere provision for a sinking fund, leaving the Company on pain of forfeiture, to pay the whole interest semi-annually, they would have no bearing on the question under debate. But such construction, cannot, it is submitted, be made. Not only is there no provision for investment of the funds

and accumulation of interest and principal, but it is declared as to one of the funds that it is to be "*annually applied*" to the payment of both "Bonds and interest," and as to the other fund, that it "shall be applied" to the same purposes, which, unless there be some different provision, legally implies that it is to be applied as it is received.

We submit, then, that these clauses put an end to any claim, that, by just construction, the Act requires the Company to reimburse the government each six months the amount of interest paid on its bonds. Such a claim must suppose that, notwithstanding, at the expiration of any six months, the Government shall have in its hands of the Company from the sources named, sufficient to pay, not merely the interest then falling due, but as the Act contemplates, possibly if not probably, an excess applicable to the bonds, and notwithstanding the Act declares that those funds shall be applied to the payment of that interest; yet, that it was designed, nevertheless, and that the Act requires, under pain of forfeiture, payment again of this very interest by the Company.

We have thus, by reason of these provisions, an explanation of the clause in the fifth section, which declares the company not to be in default until "refusal or failure of said "company to redeem said bonds or any part of them when "required so to do by the Secretary of the Treasury in "accordance with the provisions of this Act."

We come, next, to the question looking to those provisions as to the mode of repayment—*At what time*, if at all, (if the Government may proceed by assumpsit for either bonds or interest), does the Act contemplate there may be a default in the payment of interest? And we answer — Such a default will occur at the maturity of each bond, if, from the sources thus provided, and upon a statement of the account and the application of the sums earliest due *from* the Government to the payment of the sums earliest due *to* the Government, be they principal or interest, any such interest shall be found to be due.

This results from the fact that there is no provision in this

clause for a statement of account by the Secretary of the Treasury each six months, and then, if the fund should prove insufficient for the payment of interest, that he shall make requisition upon the Company to pay the balance.

The only time of ultimate payment of either bonds or interest is fixed by the sixth Section, namely, "shall pay said bonds at maturity"; under which, if any interpolation is to be made, it can only be one requiring interest to be paid, not semi-annually, but at the maturity of the bonds.

It will be noted that these Bonds were to be payable in thirty years from their respective issues, and that they were to be of dates scattered over the thirteen years allowed for construction, as each forty miles were completed. The fund thus provided for repayment would be first applicable to the payment of all accrued interest at the time of application, and next to the principal of the Bonds earliest due, and so on to the end of the thirteen years.

VI.

In concluding this point, it may be proper to advert to a consideration which has been and will be pressed by the Government, namely; that the positions thus assumed by the Company may, or as events have turned out do, lead to so large a pecuniary loss by the Government that it is improbable that the charter was designed or can be construed so as to produce these consequences.

To this we reply:

1st. That so far as the suggestion is founded upon the large presumable loss which (if the past and present use of the Road by the Government is never to be enlarged, nor the earnings of the Road increased,) Government will sustain by reason of the loss of interest on the interest it has paid and must pay, unless reimbursed in some manner,—that the provisions of the charter cannot be affected by subsequent results,—that it is clear that Congress at the time acted upon the belief that the two funds which it provided to that end, would or might probably pay, not merely the interest, but

part, at least, of the Bonds; or that if it should turn out otherwise, yet it was willing to take the risk of failure in that respect, secure as it was by the mortgage and the provisions for forfeiture, of the ultimate payment of each Bond and any balance of interest. *It was all the security the Government could get. To superadd by way of construction an assumpsit to this, which forfeits to the Government all the property, by means of which alone such assumpsit could be enforced, or made of any value*, would have been idle indeed. We may add, that if the Court could judicially notice the reports of the departments to Congress, it would, we believe, be found that the anticipated and actual saving to Government by the use of the Road transcends the whole amount of principal and interest of the Bonds.

2d. We further add that the surrounding circumstances show that it was not and could not have been contemplated by Congress that the interest on the Bonds was to be reimbursed each six months, otherwise than by the special funds thus provided in the Act.

The road contemplated by the Act was to be two thousand miles long. The period limited for its completion was thirteen years. Through its entire length it was to be built through a wilderness. From what resources, if the payment of semi-annual interest on the bonds was contemplated by the Act, could Congress have anticipated that such payment could be made? Running through a desert, it would have little or no income until completed, — that is to say, during the thirteen years pescribed by the Act. From the sales of its lands (after the same should, in parcels, on the completion of each forty miles, be conveyed to it by the Government) nothing could have been fairly expected until the certainty of the completion of the road should induce subsequent immigration and settlement, and then only in limited amounts, spread over long periods of credit. The Act contemplates that the subsidies of the Government, in bonds and land, would not be adequate to its construction, yet the only apparent absolute means of the Company to complete the

enterprise were the subscriptions to stock. Could the framers of the Act have hoped that parties would be found to invest their substance in the stock of this *quasi* public corporation in the face of a provision that, during the whole thirteen years to be employed in the construction of a road from which no income could be expected until its completion, they were, in some way, to find the means, each six months, to pay to the Government interest on the amount of its bonds, and that a failure to do so would involve the forfeiture of all past expenditures, and of the grants, rights, and franchises, in reliance on which they had embarked in the adventure?

It would be a curious mathematical problem to find if, until the completion of the Road, the Company had no resources but its two million dollars of stock subscription, to pay each six months the interest on the Bonds, during the thirteen years, how much of the proceeds of the subsidy thus given to aid the adventurers would have been left to build the road.

VII.

If it shall be held that, but for the provisions of the 6th section of the Act of 1872, and the 5th section of the Act of 1864, Government would be legally entitled by way of suit or set-off to enforce against the Company, as it accrued, each six months' interest, then we submit that, by the force of those sections of the charter, the Government has contracted not to use that right to extinguish in any way the claim of the Company to be paid *in money* the one-half of the sums earned in transportation.

The provisions of the Act of 1862, we again insert. They are as follows:

"* * * and shall at all times transmit dispatches over said telegraph "line, and transport mails, troops, and munitions of war, supplies, and "public stores upon said railroad for the Government whenever required to "do so by any department thereof; and that the Government shall at all "times have the preference in the use of the same for all the purposes "aforesaid, (at fair and reasonable rates of compensation, not to exceed

"the amounts paid by private parties for the same kind of service,) *and all* "*compensation for services rendered for the Government shall be applied to the* "*payment of said bonds and interest*, until the whole amount is fully paid. " * * * * And after said road is completed, until said bonds and "interest are paid, at least five per centum of the net earnings of said *road* "*shall be* annually applied to the payment thereof."

The provision in amendment of the charter, viz., section 5 of the Act of 1864 (13 Statutes at Large, p. 356), after extending the time for the completion of the road one year, is in the words following:

"*Be it further enacted*, * * * * That only one-half of the compen- "sation for services rendered for the Government by said companies shall "be required to be applied to the *payment of the bonds* issued by the Gov- "ernment in aid of the construction of said roads."

Now the two topics of these sections are, — (1st) The reimbursement to the Government of all its payments of Bonds or interest: (2d) The extent to which the sums due it for the very services to recover which this petition is filed, shall be applied to reimburse the very interest which is filed in set-off to this petition.

On the faith of this agreement the charter was accepted and the enterprise undertaken. The record finds that, up to February 1st, 1871, the Government conformed to these terms of the charter and paid one-half of the sums earned by transportation to the Company, and applied the other half "on account of interest paid upon the Bonds." (Record, p. .)

It further finds that the Secretary of the Treasury, in 1871, "had recently" withheld the whole sum due for services, and as the prayer for additional findings (not allowed because irrevalent and immaterial, and not because not proved,) shows "he directed that they be retained by the "Government to set-off the amounts of interest paid by it" on the Company's account.

The record further finds that thereupon, by the Act of March 3d, 1871, section 9 (16 Statutes at Large, p. 525), it was enacted:

"SEC. 9. That *in accordance with the fifth section of the Act approved* "'*July* 2, 1864, entitled 'An Act to amend an Act entitled An Act to aid

"'in the construction of a railroad and telegraph line from the Missouri "'River to the Pacific Ocean, and to secure the Government the use of the "'same for postal, military, and other purposes,' approved July 1, 1862, "'the Secretary of the Treasury is hereby *directed* to pay over *in money* to "the Pacific Railroad companies mentioned in said Act, and performing "services for the United States, one-half of the compensation, at the rate "provided by law, for said services heretofore or hereafter rendered: "*Provided*, That this section shall not be construed to affect the legal rights "of the Government or the obligations of the companies, *except as herein* "*specifically provided.*"

The proviso at the conclusion of the section is clearly designed to leave open for legal construction the question of when and how, under the charter, interest was payable, the Act simply refusing to sanction the withholding the one-half transportation agreed by the charter to be paid to the Company.

The record further finds that subsequently, up to 1873, payments of one-half the transportation were made to the Company in conformity to the charter.

Next comes the Act of March 3d, 1873, section 2 (17 Statutes at Large, p. 508), which contains the following clause:

"SEC. 2. That the Secretary of the Treasury is directed *to withhold* all "payments to any railroad company and its assigns on account of freights "or transportation over their respective roads of any kind to the amount "of payments made by the United States for interest upon bonds of the "United States issued to such company, and which shall not have been re-"imbursed, together with the five per cent. of net earnings due and un-"applied, as provided by law; and any such company may bring suit in "the Court of Claims to recover the price of such freight and transporta-"tion; and in such suit the right of such company to recover the same "upon the law and the facts of the case shall be determined, and also the "rights of the United States upon the merits of all the points presented by "it in answer thereto by them, and either party to such suit may appeal to "the Supreme Court; and both said courts shall give such cause or causes "precedence of all other business."

Under this Act the present petition is filed, and we submit,—

1st. That the purpose of the Act of 1873 is not to repeal the charter or any part of, if (to use the language of the 8th section) it could be so repealed, "having due regard to the "rights of the Company."

This is obvious, since it authorizes a suit to be brought by the Company "to recover the price of such freight or transportation." If the intention was to repeal the provision as to payment of one-half or the transportation, it would have been idle to authorize a suit to recover for that very transportation.

Again, the Act does not order an appropriation of the sums due for transportation to the payment of interest or principal, as it would have done if its purpose were to treat the right as settled — it merely authorizes the same to be *withheld.*

It authorizes a suit by the corporation in which "the "*right of said Company* to recover the same upon the law and "the facts *shall be determined.*"

Now the right of the Company to be paid in some form is indisputable, but its right to recover without being subject to offset was the question as shown by the legislation above referred to (and by the action of the Secretary) to have been *the one matter in controversy.*

Again, the provision is that the rights of the United States upon the merits of all the "points presented *in answer thereto*" are to be decided by the Court. In answer to what? — "the right of such company to recover the prices of such transportation."

If the purpose had been to provide for a set-off, such language could hardly have been used.

The clear purpose of the Act is to remit to the judicial tribunals the question which Congress had settled by the Act of 1871, so far as it could settle it, namely: Whether, upon the true construction of the charter, the Government were legally bound to pay the Company for one-half of the transportation, or whether it might retain that half towards interest on the Bonds?

2d. We submit that, having agreed with the Company by the charter, in a provision which recites and refers to the not doubtful but certain future indebtedness of the Company to the Government, that it will retain but half the sum which may

be earned by the Company by transportation, in order to provide for that future indebtedness, and that it will pay the other half in money to the Company, the Government cannot at law or in equity be allowed, except by an express repeal of the provisions of the charter, to defeat the claim of the petitioners, even if the Act of 1873 had provided for a set-off, which it does not, but merely for a decision as to the effect of the charter.

3d. We submit further, if, but for the Act of 1871, the foregoing position could not be maintained, yet, looking to the attitude of things under which that Act was passed, it must be deemed, not a contruction of past legislation, but as properly an amendment of the charter; and as the record shows its acceptance by the Company, and that it was acted upon by both parties from 1871 to 1873, it binds both parties.

S. BARTLETT.

In the Supreme Court of the United States.

THE UNION PACIFIC RAILWAY COMPANY,

vs.

THE UNITED STATES.

ARGUMENT OF J. P. USHER FOR THE CLAIMANT.

In the Supreme Court of the United States.

THE UNION PACIFIC RAILWAY COMPANY,

vs.

THE UNITED STATES.

ARGUMENT OF J. P. USHER FOR THE CLAIMANT.

HEADS OF ARGUMENT.

Question at issue.
The terms of the contract.
Burthen of proof is on the Government.
Principles of interpretation applicable to the contract.
The theory of the government.
No principle requiring periodical payment of interest on the sum lent.
Obligation of repayment of interest previously paid, does not infer repayment periodically.
Objections to the theory of the Government.
Its inconsistency with the circumstances of the loan.
Question of interpretation by intention settled by the rejection of Mr. White's amendment.
Inconsistency with lien clause.
With the conditions explicitly imposed.
With the net earnings clause.
With the regulation of charges clause.

The Kansas Pacific Railway Company, is vitally interested in the inquiry in this suit, because it has received bonds of the United States amounting to $6,303,000 in aid of the construction of its road, upon which the United States have paid interest in excess of the sums credited to the company by the United States, and the Secretary of the Treasury is now withholding payment from the company for services rendered by it to the United States to pay that interest. The decision of this case will conclude the rights of that company. I avail

myself, therefore, of the courtesy of the counsel appearing in this case, to submit briefly my views on the controversy before the Court.

The Question at Issue.

The only question I present to the Court in the case now before them is this:

Is interest payable half yearly on the loans by the Government to the Pacific roads?

The solution of this question must be found, (A.) in the examination of the language of the contract between them. (B.) In the intention of the parties at the time. (C.) In the practical interpretation heretofore given to it.

The language of the contract is found in the clauses of the two Pacific Railroad Acts of '62 and '64.

The intention of the parties is further shown by the debates in Congress, the situation of the country, the circumstances of the transaction, and the contemporaneous belief of the officers of the Government and the borrowing companies.

The practical interpretation is evidenced by the usage of the departments for several years subsequent to the loans.

I proceed to state the interpretation I give to the provisions of the acts of Congress in question. No verbal criticism however careful or minute, can altogether elucidate the ambiguities or explain away the inconsistencies of the text; and all that the most painstaking commentator can expect, is to arrive at a construction that may give effect, with as little straining as possible of the meaning of the letter of the act, to the intentions of Congress as manifested in its discussion of the subject, and to the understanding of the ob-

ligations assumed by them, which the borrowing companies would gather from that discussion.

The language of the sections of the Pacific acts is somewhat crude. In treating of the repayment of the loan, the language of the act would seem in some places to contemplate that the bonds should be specifically payable by the company itself, leaving the Government in the position of a surety only. Thus, section 5 speaks of the "failure of said company to *redeem said bonds*," and section 6 establishes the condition that the "company shall *pay said bonds* at maturity." Compensation for services is to be "applied to the *payment of said bonds*, and a per centage of net earnings annually *applied to the payment thereof*." On the other hand, section 5 enacts that the mortgage is "to secure the repayment to the United States of the *amount of said bonds*," and section 6 "that said company may *pay the United States*, &c."

In the same way, the primary liability for the payment of the interest is sometimes treated as if falling on the company, elsewhere as on the Government.

The interest on the bonds is mentioned three times only in the two acts—once in section 5 of the act of '62, twice in section 6. In the act of '64 it is not spoken of at all.

"Bonds," and "bonds and interest," or "amount of bonds and interest thereon paid by the United States," seem to be used indiscriminately as equivalent to the sum due to the government.

The terms of the contract are entirely prepared by the Government. The parties now sought to be charged had no part in drawing it up or giving expression to its terms. Had it been intended to make the borrowing companies pay interest half yearly, a few additional

words would have left the matter beyond the possibility of a doubt. And if we assume that it was the intention of the Government to embody such a liability in the act, we must ascribe to their legal advisers the grossest incapacity in failing to use apter words for such a purpose.

I consider the transaction to have been simply a loan of many millions of money, repayable with six per cent. interest, after thirty years, as provided in the acts. The fact that on the one hand the loan was made in interest bearing bonds, and on the other that repayment might be made in any evidences of indebtedness of the United States, does not modify the actual nature of the transaction. The relation of the parties is exactly the same as if the loan had been made and been repayable in currency. The company had nothing whatever to do with the bonds, as such, or with the interest payable upon them. It received and used them as money, and thus became an ordinary debtor to the Government for a sum of money repayable with interest at a future time.

A loan of this description bears interest only as an incident to the principal debt and creates no stipulation for periodical payment of interest, or thus calls for interest upon interest or compound interest.

While this view is not free from every objection, yet it obviously does less violence to the language of the act than the construction now sought to be put upon it by the Government.

The Government treat the company as liable to it every half year for the interest paid by it, and so states the accounts between the parties with half-yearly rests, on the entire balances of which it charges interest, and thus charges the company with compound interest on

the original loan. The phrase, "to secure the repayment of the amount of said bonds together with the interest thereon *paid by the United States*," is considered as broad as if it had added to it "together with interest on such interest from payment thereof." "Failure to redeem said bonds" is deemed equivalent to the wider expression of "all sums due," and thus payment of the interest-bearing bonds not only includes interest due thereon, but is construed to cover compound interest. Sec. 5 of the Act of 1864 is treated as having "and interest" inserted, and the expression "payment of said bonds" is made to cover interest due before the maturity of the bond itself.

According to the construction I claim, all amounts retained for transportation are at once applied to the principal due, and interest computed on the principal from time to time remaining due by the company, as would be the case in an ordinary interest-bearing bond repayable at a future time. The Government apply amounts retained first to the half-yearly interest, and any surplus only to the principal debt.

It is unnecessary to enlarge on the far more onerous character of the loan, if made on the terms now set up by the Government, than in the manner we claim.

The provisions of the Pacific acts of July 1, 1862, and July 2, 1864, which regulate the pecuniary relations between the Government and the subsidized roads, and constitute the terms of the contract which is now submitted to the Court for interpretation, are as follows:

Act of July 1st, 1862,

Sec. 5. "The Secretary of the Treasury shall, upon the certificate in writing of said Commissioners, * * * issue to said Company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said

interest payable semi-annually) * * * to the amount of sixteen of said bonds per mile * * * and *to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued* and delivered to said Company, *together with all interest thereon, which shall have been paid by the United States,* the issue of said bonds and delivery to the Company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph together with the rolling stock, fixtures and property of every kind and description, and in consideration of which, said bonds may be issued, *and on the refusal or failure of said Company to redeem said bonds or any part of them when required to do so by the Secretary of the Treasury,* in accordance with the provisions of this act, the said road, with all the rights, functions, immunities and appurtenances thereto belonging, and also all lands granted to the said Company by the United States which at the time of said default shall remain in the ownership of said Company, may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States."

Sec. 6. "The grants aforesaid are made upon condition that *said Company shall pay said bonds at maturity* * * * and all compensation for services rendered for the Government shall be applied *to the payment of said bonds and interest until the whole amount is fully paid.* Said Company may also pay the United States wholly or in part, in the same or other bonds, treasury notes or other evidences of debt against the United States to be allowed at par; and after said road is completed, *until said bonds and interest are paid* at least *five per cent. of the net earnings* of said road *shall* also *be annually applied to the payment thereof.*"

Sec. 20. "The corporation hereby created, and the roads connected therewith under the provisions of this act shall make to the Secretary of the Treasury an annual report wherein shall be set forth * * * * *

"Fifth. The amount received from passengers on the road.

"Sixth. The amount received for freight thereon.

"Seventh. A statement of the expenses of said road and its fixtures.

"Eighth. A statement of the indebtedness of said Company, setting forth the various kinds thereof.

"Which report shall be sworn to by the President of the Company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year."

Act of July 2d, 1864:

Sec. 5 "Only one-half of the compensation for services rendered for the Government shall be required to be applied *to the payment of the bonds* issued by the Government in aid of the construction of said road."

Sec. 11. "That section five of said act" (the act of July 1st, 1862) "be so modified and amended that * * * any * * * Company authorized to participate in the construction of said road may on the completion of each section of said road, as provided in this act, and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time and maturity, rate and character of interest, with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of despatches, and the transportation of mails, troops, munitions of war, supplies and public stores for the government of the United States."

Burthen of proof on the Government.

A contract for payment of interest on a loan, periodically, before the maturity of the principal, is an independent contract and not a mere accessory to or incident of the contract for repayment of the loan. See *Southern R. R. Co.* vs. *Moravia*, 61 *Barb., N. Y.*, 180. As an independent contract the party asserting it must establish its existence, and it is claimed, therefore, that to

induce this tribunal to lay upon the company the obligation of such a contract, something more than ingenious speculations upon ambiguous language, or farfetched and abstruse rules of construction must be brought forward.

Principles of Interpretation.

The contract coming before the Court for construction consists of the relevant provisions of the two Pacific Railroad acts, assented to by the railroad company. And in its interpretation we ask the Court to apply the following principles:

1. Its terms must be reviewed in the light of circumstances attending the transaction. The situation of the parties, and the subject matter of the contract must be considered. (*Wilson* vs. *Troup*, 2 *Cowen*, 195.) The Court will look to the motives that led to it, and the objects intended to be affected by it. *Davis* vs. *Barney*, 2 *Gill & J.*, 382. And treating it as an act of the legislature, the Court will notice the history of the measure, and the situation of the country at the time of the passage of the law. *Preston* vs. *Browder*, 1 *Wheat.*, 115.

2. Although the Government is a party to the contract, it will be interpreted in exactly the same manner as if made between private persons. (*Gilbert* vs. *United States*, 1 *Co. Claims*, 28; *Sholes* vs. *State*, 2 *Chand., Wis.*, 182; *Huidekoper* vs. *Douglas*, 3 *Cranch*, 69.) In this there is a distinction between an ordinary contract, a loan, and a charter or grant. (*Home of Friendless* vs. *Rouse*, 8 *Wall.*, 430.

3. The terms of the contract are embodied in instruments prepared by the Government. The companies had no part in their preparation, and the one now before the Court had no existence. They had simply to

assent to or dissent from proposals that had previously received their final expression. Any ambiguity therefore is chargeable to the party preparing the instrument, and doubtful provisions will be construed against him and in favor of the party simply assenting to what the other party had prepared. "A party who takes an agreement prepared by another and upon its faith incurs obligations, or parts with his property, should have a construction given to the instrument favorable to him." FIELD, J. in *Woonan* vs. *Bradley*, 9 *Wall*, 394. It was the duty of the United States in this to use unmistakeable language. *State* vs. *Stoll*, 17 *Wall.*, 436. The acts were in the nature of proposals to capitalists to invest in these undertakings. "The State is in the situation of a person who holds forth to the world the conditions on which he is willing to sell his property." *Huidekoper* vs. *Douglas*, 3 *Cranch*, 69. And when the proposals have been accepted and enormous sums invested on such an invitation, the Government "would come with an ill grace into Court to insist on a latent and obscure meaning." (*Id.*) And a written instrument, the true import of which is doubtful, and the intention of the parties to which cannot be gathered from its language, will be construed most strongly against the person using the doubtful language, and in favor of him who has been misled and advanced his money upon it. *Barney* vs. *Newcomb*, 9 *Cush.*, 46.

4. While it is the duty of the Court to interpret the instruments according to the intention of the parties as gathered from their language, yet the party bound—in this case the railroad company as the debtor—may show that he understood the obligation in a particular manner, and that his understanding of it in such manner, was at the time known to the other party. That

understanding of the contract must, then, be accepted by the Court, although differing from the interpretation the Court would otherwise have adopted, and although no actual fraud be alleged. *Barlow* vs. *Scott*, 24 *N. Y.*, 40; *White* vs. *Van Horn*, 19 *Ia.*, 189; *Gunnison* vs. *Bancroft*, 11 *Vt.*, 490. See *Mowatt* vs. *Londesborough*, 3 *El. & B.*, 334.

5. The Court will give great if not controlling weight to the practical construction put upon the contract by the parties. *Chicago* vs. *Sheldon*, 9 *Wall.*, 50. And to the continuous interpretation of the parties for a series of years, *St. Louis Gas Light Co.* vs. *St. Louis*, 46 *Mo.*, 121. In *Forbes* vs. *Watt*, *Law Rep.*, 2 *Scotch Appeals*, 214, the House of Lords hold that where parties have long acted on a given practical construction, that construction will not be departed from.

6. The contract must be interpreted by the law of the District of Columbia, which is at once the locus celebrati contractus, (the contract being made by the filing of the company's assent in the Department of the Interior) and the locus solutionis—at the treasury. That the loan is secured by mortgage of property elsewhere, does not affect this point. *Sands* vs. *Smith*, 1 *Neb.*, 108. Nor that parts of the contract are to be performed elsewhere. A contract having different places of performance is divisible as regards the laws by which it is to be interpreted. *Pomeroy* vs. *Ainsworth*, 22 *Barb.*, *N. Y.*, 118; *Fonteno* vs. *Sorbeau*, 2 *La. Ann.*, 774.

The Theory of the Government.

The interpretation of the contract now contended for by the Government has had no origin in legal acumen. The legal advisers of the Executive which first retained the money belonging to the company on the

pretext of their indebtedness for arrears of interest obeyed the behests of political partizans, and sought an instrument of political warfare rather than the fair interpretation of an important contract. That such is the case may be readily seen from the extent to which general considerations in no way relevant have been invoked at every stage of the discussion by the counsel for the United States. They have sought rather to show what ought to be the contract of the parties than what is, and struggle by eking out the ambiguity of a single sentence with weighty reasons of State,—a little law and much politics,—to foist into the contract an obligation which the ordinary mind would never for a moment suspect it to contain. Apart from such general considerations, the theory of the Government finds its only pretexts in the fact of the Government having to pay interest half yearly on the bonds and in the terms used to indicate the liability to repayment of interest in the fifth section of the act of 1862.

No Principle requiring periodical payment of Interest on a Loan.

The liability of the company to pay the amount of the bond and all interest paid by the United States is undisputed. A loan at interest for a definite time is admitted. Does the length of the time for which the loan is made raise any presumption that interest is payable independently and periodically, instead of only as incident to the loan? No such presumption exists. The idea that because the United States paid interest every year, the companies are liable forthwith to reimburse the Government, is founded on political, not on legal considerations. Instead of looking on the issue of bonds, in its true light, as a mere issue as

a form of paper money, it treats them as investments affecting the liabilities of the borrowing companies. It reduces the much-vaunted liberality of the Government to the temporary accommodation of a mere guarantee, leaving the full onus of repayment to fall unimpaired on the companies. In short, it assumes the Pacific companies to be "grasping monopolies," from which the Government, when it created or subsidized them, had armed itself with power to exact, Shylock-like, its exact pound of flesh.

Prepayment of Interest Previously Paid by United States does not infer Immediate Repayment.

The only expressions in the acts which can be construed into anything approaching an independent contract for payment of interest before the maturity of the principal debt, are found in the first part of section 5 of the Act of '62. It is there said, "to secure the repayment to the United States, *as hereinafter provided*, of the amount of said bonds, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage." This clause, even taken alone, is more consonant with the idea that the interest is repayable only as incident to the principal, and not as soon as paid by the United States. "To secure the repayment of amount of said bonds, together with all interest," is not equivalent to "secure the repayment of amount of said bonds, and of the interest from time to time paid thereon." The first couples the amount and interest together as one debt, while the latter would perhaps leave room for argument that separate liabilities

maturing at different times were intended to be secured. It is not however necessary to rely on such verbal minutiæ. We must look on the whole section together. It is equivalent to an instrument creating a mortgage security or lien; the sentence beginning "to secure," just cited, is merely a recital of the intent of the instrument, not in any sense an operative part of it: it vests no right, creates no power; the operative words of the contract are found in the latter part of the section commencing, "and on the refusal." In this clause the interest is not mentioned at all: no security is provided for its repayment until the maturity of the principal, and as its incident. And it is a familiar principle that when the words in the operative part of an instrument are clear and unambiguous, they cannot be controlled by the recitals. *Walsh* vs. *Trevanion*, 15 *Q. B.* 733; *Bell* vs. *Bruen*, 1 *How.*, 169; *Lawrence* vs. *McCalmont*, 2 *How., U. S.*, 426. Thus our opponents fall into the absurdity of holding this section of the act to recite a liability for interest previous to and independent of the principal, and to further recite the purpose of securing the discharge of such liability, while it utterly fails to do anything of the kind. It secures by sufficiently apt words the bonds at their maturity and the accrued interest as an incident, but leaves the Government utterly remediless as to the fifty-nine contract for payment of half-yearly interest which it is sought to deduce from it.

Objections to Theory of the Government.

As substantial objections to the theory of the Government, independently of the weakness of the direct arguments on which it is based, I point to the circumstances under which the loan was made, the rejection of Mr.

White's amendment, and the language of the acts as to the conditions of the subsidy. Everything points to a debt repayable at a long date, and supposed to be almost wholly provided for by the two sources of repayment pointed. A sinking fund is practically created which is expected to absorb the debt, perhaps even before its maturity arrives. Nothing warns the investor to beware of the accumulating powers of interest half-yearly compounded.

Inconsistency of the Government Theory with the Circumstances Attending the Loan.

The case was this: The United States had land and credit, and, for governmental purposes, desired the roads to be built, and proposed to grant its lands and loan its bonds, and pay them, principal and interest, if the company would build the roads, trusting to the provisions of the acts for repayment, and though the debt might nominally be increased by the accumulation of interest, yet the Government was to be compensated in diminished general expenses to be caused by the construction and use of the road.

The acts specially declare the objects of Congress, and provide how and in what manner the company shall reimburse the Government for the amount of the bonds it should issue. The title of the acts is very specific on this question. The object of the laws is "to secure the Government of the United States the use of the road and telegraph for postal and military and other purposes."

The third section of the act of July 1, 1862, states expressly that the purpose of the act in making the grants of lands is (1) to secure the safe and speedy transportation of the mails; (2) the transportation of troops, munitions of war, and public stores.

The fifth section vests the title to "the road and telegraph, rolling stock, fixtures, and property of every kind and description," in the United States, as mortgagees, to hold for repayment of the thirty-year bonds and interest advanced by the Government to build the road; and in case any portion of the debt remains unpaid, or in case the company fails to comply with the stipulations touching the payment of the bonds, directs the seizure of the whole for the absolute use and benefit of the United States

Now, mark, this seizure is not to pay the debt, not to force an account, but to secure the legal and political objects of the Government in creating the work. Just here it is contended by some persons that a relation of debtor and creditor only was created, and the corporate property is made free of the government use, control and ownership, by payment of the debt. But that was not the sole object of the Government. The Government wished to get its money back, to be sure, and with that view determined to appropriate its funds; but for fear it might be contended that the payment of the mortgage would free the road of its power over it, the fifth section was made as it is, and the sixth section was inserted immediately after the mortgage clause, more distinctly showing the object of Congress.

This sixth section provides and declares that the grants mentioned in said act of Congress are made on the condition that (1) said bonds shall be paid at maturity; (2) that the company shall keep the road and telegraph line in repair, (3) and in use, (4) and at all times transmit dispatches over said telegraph line (5) and transmit mails, (6) troops, munitions of war, and supplies and public stores, on said railroad for the

Government, whenever required to do so by any department thereof.

These are duties which the corporation is required to perform to the Government, not for a definite period, but forever. They are a part of the constitution and nature of the corporation. They cohere in the law of its being. It was constituted for this purpose. But for the duty to perform these obligations, it never would have been created. And the performance of these duties by the means of this road and telegraph, or some other suitable means, is essential to the existence of the Government of the United States.

The nature of the interest of the United States is further shown by the seventeenth section. That section provides if (1) the company fails to finish the road and telegraph in a resonable time, or (2) to keep the same in repair, or (3) to keep the same in use, or (4) allow the same to be out of repair, or (5) allow it to be unfit for use, Congress may pass an act to insure the completion of the same or put the same in repair or use, and may direct the whole income to be employed for that purpose to defray the expenditures thereof.

Now, the meaning of this is, that if by failure to comply with the conditions of the grant, Congress does not see fit absolutely to oust the company of all right under the fifth and sixth sections, Congress may take the road away temporarily, to put it in repair or in use, or to finish it, and may repeat this as often as its own enjoyment of the work for transporting troops and mails is interfered with.

Such was the intention and object of Congress as shown in the act of 1862, but the terms upon which it was proposed the road should be built were not such as would enable the companies to carry out the object of

Congress, and so the work languished until 1864, when the following material modifications in favor of the companies were made, to wit: The grant of lands was doubled by section four of the act of 1864, and, by section ten, section five of the act of 1862 was so modified and amended as to authorize the issue by the company of their first mortgage bonds upon the railroad and telegraph, subordinate only to the provisions of the sixth section of the act of 1862, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores, for the Government of the United States; and by section five, of the act of 1864, section six of the act of 1862 was so modified and amended as to require only one half of the compensation for services rendered for the Government, to be applied to the payment of the bonds issued by the Government in aid of the construction of the road. These were the principal modifications of the act of 1862 in favor of the companies, which enabled them to construct their roads with unparalleled rapidity.

The companies issued their first mortgage bonds, amounting to millions of dollars, and they have passed into the possession of the public, which supposed them to be a good and valid security;—that they constituted a first lien upon all the railroad property, subject only to the paramount right and use by the Government of the United States, for which the United States should pay to the company fair and reasonable rates—one-half only to be carried to the credit of the company in discharge of its debt to the United States, and the other paid to the company to enable it to pay its interest upon its first mortgage bonds, and maintain and operate the road—and so avoid a forfeiture either to the Government for failure to keep the road in repair and use, or to

its first mortgage bondholders for failure to pay the interest of their first mortgage bonds.

It was clearly the intention of Congress to provide for the construction and continued operation of these roads, and it was then believed, as the future has shown, that the earnings would be sufficient to pay the interest on the first mortgage bonds, if the United States should pay the companies only the half of their compensation for services, leaving the other half to be applied to the debt, and it was the understanding and agreement that, if from any cause the half of the earnings and the 5 per cent. should not pay the United States, at stated intervals, the sums that they should have paid out for interest upon the bonds issued to the companies, such sums would remain to the debt of the company, to be paid thereafter, perchance at the end of thirty years. The possibility, or indeed the probability, of the United States not being reimbursed at the time for the interest it should pay upon the bonds issued to the companies was well understood, and the chance freely and fairly taken. The consideration for such a condition of the case was believed to be ample in the use of the completed road, and Congress was not mistaken in its just expectation in this particular.

It can easily be demonstrated by the facts and figures that the Pacific railroads have already saved to the United States, in the expense of transportation, and in the cost of supplies and diminished number of troops, many millions of dollars, besides the large sums the company has paid to the United States for stamps, passenger tax, and tax on its bonds, so that the United States could now well afford to cancel the debt of the company, instead of taking measures to drive it to insolvency and ruin.

What Congress anticipated has happened. Expenses have been avoided. The Government has saved much more than the interest which it has paid upon its bonds issued to the company, and remaining unpaid in services.

To properly understand the objects and purposes of the contract, the condition of the nation at the time of the passage of the acts referred to must be considered. 3 How., p. 1. We know that for many years the necessity of a Pacific railroad was pressed upon Congress, through conventions and petitions; that in the Chicago Convention of 1860, the party about to become dominant declared it to be the duty of Congress to provide for the construction of the road. At the date of that convention, the commercial and postal advantages of such a road may have been most prominent in the public mind; but upon the breaking out of war, its necessity to the Government as a means for the preservation of its authority over all its territory upon the Pacific coast, became so apparant that provision was made for building the road, at a time when the expenditures of the Government were more than a million of dollars per day for carrying on the war; and when, two years afterward, it was found that the work had languished because of the inadequacy of governmental assistance, additional aid was given by Congress to secure the speedy construction of the work; and this though the nation was then daily expending larger sums in carrying on the war, and though its debts had increased by hundreds of millions.

We all know that Congress intended to make liberal provision so as to insure the immediate construction of these military, postal, and commercial roads. It was in the midst of war—civil war—and

came out of the throes of the great rebellion. It was to stretch forth the hands of the great valley until they clasped in peace and unity the hands of Oregon and California. It was to bind and cement in indissoluble bonds a dissolving Union. It was to carry the mails "safely" and "speedily" to the people inhabiting half of all the national domain. It was to transmit telegraphic despatches to all these people with the rapidity of thought. It was to send troops and munitions of war to protect the defenceless men, women and children of the frontier against the Indians, with whom the rebels had made treaties, and united them in the war against the Government. It was to enable the landless to have homes of their own. It was to develop and convert to the national uses the vast stores of gold and silver, and other valuable minerals imbedded in the mountains, and inaccessible, but by these and other roads. It was to enable the Government to suppress insurrections and repel invasions, should any occur, in all the country west of the mountains; and it was through the instrumentality of these roads that the people were to be brought into easy, cheap and frequent communication with each other, whereby they should live together in lasting harmony and peace. To say the least, it can only be a short-sighted and ungenerous spirit, which fails to appreciate a work which, more than any other ever undertaken by the Government, tends to consolidate peace, and to maintain the dignity and reflect the glory of the nation.

QUESTION OF INTERPRETATION BY INTENTION OF PARTIES SETTLED BY THE REJECTION OF MR. WHITE'S AMENDMENT.

On May 1, 1862, Mr. White said (*Cong. Globe*, 1861-2 *p.* 1911):

"It will be observed, by reference to the section, that there is no provision in reference to the payment of the current interest. I therefore move to amend by adding to the section the following:

"'It is declared to be the true intent and meaning of this section that the current interest on said bonds shall be chargeable to said company, to be by them reimbursed to the United States within one month after each semi-annual payment thereof by the United States; and a default therein shall subject the said company to the same liability and forfeiture above provided for in case of the non redemption of the bonds at their maturity.'

"The section, as it now stands, does not make any provision for the payment of the current interest as it accrues semi-annually. It may or may not have been the intention of the committee that the interest should be paid by the company. Probably it was; but if not, then this amendment, of course, will involve a principle which the committee has not sanctioned. If it was the intention of the Committee of the Whole that the railroad company shall pay the current interest, then, to avoid the difficulty and uncertainty which creditors will have, and to insure its prompt payment by the United States, this amendment provides that the Government shall first pay it, and the company reimburse it to the United States within one month. Of course, it will be a little gain to the company, to the extent of the interest upon the interest. This is the only way the interest can be promptly secured to the creditors.

"Mr. Campbell. I suppose, of course, that the gentleman from Indiana is acting in perfect good faith; but I am clearly of the opinion that the gentleman has not studied faithfully the provisions of this bill. It has been demonstrated to this House that the cost to the Government of transportation to our forts in the Territories is more than double the amount of the entire interest upon all the bonds proposed to be issued; and

the bill is based upon the supposition that the transportation of Government supplies over the road will be equal to, if not greatly exceed, the annual interest upon the bonds issued from year to year. *It is not the intention of the bill that the interest shall be paid semi-annually to the Government.* It is not supposed that, in the first instance, the company will reimburse the interest to the Government. It will reimburse it in transportation; but if the transportation does not meet the interest, then the Government is to have a mortgage on the entire road for the full amount of principal and interest. I hope, therefore, that the amendment will be voted down.

"Mr. White's amendment was rejected."

It is a well settled rule of common law, to which I have already cited authorities, very well expressed in the California code (*Civil Code, sec,* 1649), that, "if the terms of a contract are in any respect ambiguous or uncertain it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." Kent says, "The true principle of sound ethics is, to give the contract the sense in which the person making the promise believed the other party to have accepted it," following Paley, who writes, "that whatever is expected by one side, and known to be so expected by the other, is to be deemed a part or condition of the contract." Now can it be for one moment seriously contended that after the rejection of Mr. White's amendment the stockholders of the Pacific companies ever contemplated the possibility of their being called on to pay interest semi-annually on the amount advanced to them. It is transparent that to every ordinary mind, the companies must have seemed absolutely secure against any such claim, and that the capitalist who found vast sums for these enterprises, and became, as stockholders in the corporations, debtors to the government for the amounts advanced as sub-

sidies, could not possibly have understood that they had assumed a liability which Congress had distinctly and specifically refused to impose. I do not hesitate to press upon the Court that this point alone is absolutely fatal to the claims of the Government. I do not claim that the discussions in Congress can be used as evidence of the intention of the contracting parties, so as to affect the express terms of the contract, but I do claim, and most earnestly urge upon the Court, that they afford conclusive evidence of the obligations the borrowing companies believed they undertook, and of the knowledge of this belief by Congress and the Executive. And sound law and sound morality alike call imperatively on this tribunal to follow that belief. Any other view is inconsistent with the dignity, the value, and the weight that should be attributed to the voice of the nation speaking through its chosen representatives: the people of this great republic are the contracting party: the debates express their wish, their will, their intention, their belief. On the faith of the representations so made, the corporations of the Pacific railroads have sunk countless millions in spanning the continent with their iron highways. And I cannot doubt that this august tribunal will hold that the nation intended to contract in a liberal and open spirit, and will reject the subtleties and refinements now offered to intensify the burthens the companies have had to undertake to accomplish these great works.

Inconsistency with Lien Clause.

I have already commented on the absurdity of holding that this section of the act can be used to raise an obligation which it fails to provide any means of enforcing. It creates a security for the loan which is a

sort of vivum vadium or Welsh mortgage, giving the creditor possession until he can repay himself out of profits, without any power of disposition, and yet, if the Government interpretation is correct, it allows the delinquent borrower to continue to receive those profits for many years after he has incurred a continually increasing debt. It is impossible to say that section 5 gives the Government any right to take possession, other than for failure to perform government service, before failure to redeem the bonds. And the Court must adopt an interpretation that makes the different clauses of the section consistent, rather than one which supposes a gross blunder in the language adopted to carry out the intention expressed in the earlier clause.

Inconsistency with Conditions of Repayment Explicitly Imposed.

Section 6 of the act of '62 professes to define the liabilities of the subsidized companies. It provides that they "shall pay said bonds at maturity," but it provides for no payment of interest at all. It is not disputed that interest might be thus payable at the maturity of the bonds as incident to them. But to say, as necessarily follows from the theory of the other side, that such a phrase can be tortured to mean not only that the company shall pay the amount of the bonds at maturity, but that they shall pay fifty-nine amounts of interest before the bonds mature at all is a proposition I think it needless to refute. No bolder attempt to foist, under the guise of interpretation, a new obligation into the expressed terms of a contract has ever been made.

Inconsistency with Net Earnings Clause.

The net earnings clause reads: "and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

If the companies were already liable to pay interest to the Government every half year after the bonds for the first section of forty miles of their roads, (most of them intended to be several hundred miles long) were issued, why should they not be bound to apply their earnings to pay interest until completion long afterwards. Can it be said the framers of the section contemplated imposing duties on the companies which they at the same time expected them to disregard? Did they intend the position to be such that at the end of six months after the completion and acceptance of the first section, the Government could bring an action for interest, or exercise their right of set off by deducting the interest from the bonds to be issued on the future completion of other sections of the road, although the obligation to apply the five per cent. had not yet arisen? If the Government view is correct it was the duty of the companies not to apply five per cent. of their earnings but the whole of them, if necessary to payment of interest, and that not annually but half yearly, not on the completion of the road, but a half year after the acceptance of the first section. The liability, if exercised, was one the Government had the means of enforcing by its sole act, as to the ruin and sorrow of the companies has since been seen. And if it did exist, the provision as to application of net earning to interest is mere surplusage, and the limit of five per cent. an actual delusion and snare.

INCONSISTENCY WITH TRANSPORTATION CLAUSE.

This clause in the Act of 1862 was as follows: "All compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid." If the companies were liable half-yearly for interest the mention of it was entirely unnecessary, because the Govment had the same right as any other creditor to offset the amount due to them against what they owed. But the inconsistency of the amended act with the theory of the Government is much more glaring. It reads "that only *one-half* of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds." And we are asked to believe that the first act meant that all compensation was to be applied first to interest and the surplus to extinction of principal, and the second that one half of the compensation was to be applied to the extinction of principal and *half-yearly interest offset against the other half.* Comment is superfluous.

INCONSISTENCY WITH REGULATION OF CHARGES CLAUSE.

Section 18 of the act of '62 is intended, in imitation of the English system, to give the public and not the stockholders the benefit of earnings above ten per cent. by a reduction of rates. It makes no mention of an allowance for interest payable on the subsidies as part of the expenditure, except so far as covered by the five per cent. clause, and evidently looks to the compensation and percentage as the sole sources of repayment of the loan. Taken in its literal meaning, if interest was periodically payable it would give the Government the power to reduce the rates although the interest swallowed up the net earnings. Such could not have been the inten-

tion. The Government must concede, either that net earnings are to be arrived at by deducting interest on the loan as well as other expenditures, or that the interpretation they contend for gives a latent meaning to the clause which makes it a weapon for oppression, rather than as it seems to us to have been intended, a guarantee of fair profit on the sums provided.

To bring further light to the consideration of a question already so fully treated of by my fellow counsel is not easy. But I feel strongly on the question at issue: I deem it one involving the national good faith. The oppressive action of the Government has brought cruel embarrassment in its train, to my friends and associates in one of these great undertakings. And if I have spoken too earnestly of the action of former officers, or recurred in unnecessary detail to the past scenes of these transactions, in which I myself was to some extent an actor, let that feeling be my excuse.

J. P. USHER.

Supreme Court

OF THE UNITED STATES.

THE UNITED STATES,
Appellants.

vs.

THE UNION PACIFIC RAILROAD COMPANY.

Statement and Points for Appellees.

E. W. STOUGHTON,
Of Counsel.

New York:
GEORGE F. NESBITT & CO., PRINTERS,
CORNER OF PEARL AND PINE STREETS.
1875.

Supreme Court

OF THE UNITED STATES.

THE UNITED STATES,
Appellants,
vs.
THE UNION PACIFIC RAILROAD COMPANY.

Statement and Points for Appellees.

E. W. STOUGHTON,
of Counsel.

The substantial question presented in the record is, whether by the true construction of the Act of 1862, incorporating the Union Pacific Railroad Company as amended by that of 1864, the United States whenever it pays interest upon the bonds issued to aid in the construction of said road is entitled to enforce immediate repayment thereof from the company, by suit or otherwise, or whether such reimbursement can be obtained only by the application of one-half the compensation due the Company for services rendered to the Government, and five per cent. of the net earnings of said road after its completion. The company insist that the latter construction is obvious and just, and consequently that it is entitled to recover the amount here claimed, being one-half the sum due for compensation as aforesaid. The Government does not pretend it may withhold this half by force of any authority to that effect in terms expressed in the statutes, but solely upon the ground

that upon payment of interest on said bonds it thereupon becomes, to that extent, creditor of said company, entitled to immediate reimbursement of the sum thus paid, recoverable by suit or offset as here claimed.

The respective rights, duties and obligations of the Government and Company are of course created and defined by the charter of incorporation and Acts amendatory thereof; and for the purpose of determining the questions here presented we need only to examine certain provisions of the Act of 1862, and the modifying and amendatory statute of 1864, although we shall, in the course of this argument, glance briefly at the Acts of March 3d, 1871, and 1873.

It will be readily perceived that the questions as to the right of the Government to retain and apply the whole or any part of the sum due the Company for compensation for services, is quite distinct from an implied right as here claimed, to demand re-imbursement of the interest paid upon said bonds; for upon the theory presented by the Attorney General, this latter right existed, if at all, by force of the Charter of 1862, and could under that have been judiciallyenforced, quite independent of such retention; and inasmuch as it is not pretended that the Statute of 1864 confers such right, we will proceed to inquire whether under the former Act the Company was bound, not merely to submit to the retention by the Government of all sums due for compensation for services as there provided, but also immediately to reimburse it for all interest paid. If the Government cannot claim such right under the Act of 1862, when considered alone, it clearly cannot when viewed in connection with that of 1864: and if by the former Act the rights of the parties in this respect were obscure, such obscurity is dispelled by the Act of 1864. It is, however, submitted that by the very language of the Act of 1862, unaided by judicial construction, Congress has in substance declared that with the exception of the retention of the aforesaid compensation, and five per cent. of net

profits, the United States can claim nothing on account of the interest or principal of said bonds until their maturity; and as by the Act of 1864, but one-half the amount due for such compensation can be so retained, the proposition is necessarily involved that the other half must be paid over to the Company.

Before proceeding to argue these questions, a few general facts, quite undisputed, displaying the relations of these parties, should be stated.

It will not, I suppose, be questioned that when the charter of incorporation, contained in the Act of 1862, was accepted by the corporators, a contract was created between the United States and the Company binding upon the latter, and not to be justly violated by the former. This contract is now presented to the Court that the rights of the parties to it may be determined; and these are to be ascertained, if its provisions are not clear, by such cotemporaneous and surrounding circumstances as may illustrate the intention of the contracting parties.

The work to be accomplished by the corporation thus created, was of great national importance. The road to be built was to extend through a vast uninhabited territory, over which savage tribes roamed, and along which, to repress their outrages, and maintain control over our national domain, especially in time of civil war, it was necessary to transport troops and military supplies at great expense and risk, at insufficient speed, and in force and quantities quite inadequate to our distressing national wants. Capital was at that time hoarded, and capitalists were slow to embark upon an enterprise so dark and unpromising as the building and equipment of two thousand miles of Railway along the desert plains, rocky slopes, and fruitless wastes intervening between the Mississippi River and the Pacific coast. Many of our citizens could not foresee when the insurrection then raging would be subdued, so as to render the investment of capital reasonably safe, even for ordinary

business enterprises; and few were bold or patriotic enough to invest their means in one whose promised returns could be seen only in the far future, and then but dimly. The immediate and pressing wants of the Government made the road a national want, and it was plain to see, that if it could be constructed, its use would be largely and most profitably enjoyed for national purposes, affording vast and rapid facilities for the transportation of troops, supplies and mails, cheapening their conveyance, rendering the control of Indian tribes comparatively easy and safe, and ultimately, but surely increasing the value of our public lands, and rendering their settlement and cultivation safe and profitable to our people, and finally linking by ties of social and commercial intercourse the Eastern with the most distant West of our common country.

In the construction and operation of such a highway, the feeblest vision could discern vast national benefits; whilst the far-sighted and hopeful could not so penetrate the future as to discover with reasonable certainty, when a return for capital invested in it, as a private enterprise, could be expected. Standing here far in their advance, we can hardly realize how the obstacles since overcome appeared to them; but I think we can clearly understand, that the great and costly enterprise, proposed by the Act of 1862, must have been then regarded as eminently a public national work, to be subjected primarily to national uses and control, for the safety and benefit of our people, and was in no just sense a scheme proposed for private ends, to be worked out and accomplished solely by private capital. The framework of the charter; the declared national purposes it sets forth; the government control assumed; the government aid proffered; the public uses to which the work when completed was to be subjected; and finally, the increased public aid promised by the Act of 1864, when it was found that the requisite private capital could not be obtained under that of 1862, all concur to establish, that the work was by

our Government deemed of such paramount national importance, that only by a narrow, illiberal and strained construction can it now be contended that any of the Government aid afforded, whether of bonds or land, should be regarded as donations to the Company? Plainly they were not, but are to be viewed as reasonable national contributions, to aid in the construction of a great national highway along our public domain, connecting the East with the far West by telegraph wire and railway; and with such profit and comfort to our people has this been accomplished, that deprivation of these benefits for five years—nay, for one—would be by them considered as a greater public misfortune than the loss of the entire sum, principal and interest, due or to become due upon the bonds in question.

Let us now briefly look at the provisions of the charter as found in the Act of 1862, and there learn, whether by its true construction, the Company expressly or by implication, became bound immediately to reimburse the Government for the interest it should pay upon said bonds.

If we refer to the 5th Section in connection with the 3d, we find it therein provided, that for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores thereon, the Secretary of the Treasury shall, upon the certificate of commissioners thereby created of the completion and equipment of 40 consecutive miles of said railroad and telegraph, issue to said Company bonds of the U. S. of $1000 each, payable in 30 years after date, to the amount of $16,000 per mile. To secure the repayment of these to the U. S., as thereinafter provided, with all interest thereon which should have been paid by the U. S., the issue of said bonds and delivery thereof to the Company was declared to constitute, *ipso facto*, a first mortgage on the whole line of said railroad and telegraph, together with all rolling stock and fixtures; and a failure to redeem said bonds, or any part of them, according

to the provisions of the Act, when required so to do by the Secretary of the Treasury, was to be followed by a forfeiture of all rights and property of the Company. By the 6th Section of the Act it was declared that said Company should pay said bonds at maturity, should keep said railroad and telegraph line in repair and use, and at all times transmit despatches over said telegraph line, and transport mails, troops, munitions of war, supplies and public stores, upon said railroad, when required so to do—the Government at all times to have a preference for all the uses aforesaid; *and all compensation for services rendered for the Government were to be applied to the payment of said bonds and interest until the whole amount should be fully paid.* And it was also provided that after said road should be completed, until said bonds and interest were paid, *at least five per centum of the net earnings of said road should be annually applied to the payment thereof.*

The 17th Section of the Act further provides, that should the Company fail to complete the road and telegraph line within a reasonable time, or to keep the same in repair and use, Congress was authorized to complete or put them in thorough repair, as the case might be, and to take the income thereof for reimbursement; and it further provided, that the roads therein mentioned must be ready for use from the Missouri to the navigable waters of the Sacramento River in California, by the first of July, 1876, or with their appurtenances, rolling stock, &c., be forfeited to and taken possession of by the U. S.

In view of these severe provisions, involving a forfeiture for failure to pay bonds, or any part thereof, at maturity, or to finish and equip said roads and telegraph line, and keep the same in use, it was indispensable that the Company should not at the outset be crippled in resources; and as but little income—not enough to pay expenses—could be expected until at least a considerable part of the road should be in operation, it is highly improbable that either party

intended the Company should pay interest accruing on the bonds it might receive during the early stages of the construction of the work.

It was soon ascertained, however, that the necessary means to start the work could not be obtained under the unfavorable terms proposed by the Act of 1862, and in consequence thereof the Act of 1864 was passed. By this the time of designating the route of the road and for completing the same was extended for one year, the Secretary of the Treasury was authorized to issue bonds when a part of the work on each twenty miles of the road should be done, instead of waiting until forty miles should be ready for use; the clause in the Act which required the Government to reserve a certain portion of bonds to be issued was repealed;—the lien of the United States upon the road, &c., as security for bonds to be issued, was subordinated to one to secure a like number and amount to be issued by the Company, and by the fifth Section it was declared that only one-half of the compensation for services rendered for the Government by said Company should be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said road; and in view of these very important modifications in favor of the Company, it was provided that the number of Government Directors should be increased from two to five.

Having thus stated or referred to the principal features of the Acts bearing upon the questions here raised, it is insisted, on behalf of the appellee,

I.—That by the true construction of the Act of 1862, even when considered irrespective of that of 1864, no obligation devolved upon the Company to reimburse the Government until the maturity of said bonds, for its payment of accruing interest thereon, except from the defined sources mentioned in the 6th section.

1st.—The Company did not become liable upon the bonds to the holders thereof; for these were to be

issued by the United States as obligors, and hence such obligation as was incurred by the Company in consequence of their issue and delivery, must be found in the charter of incorporation. The declared purpose of the Government in issuing them, and in granting lands, was to aid in the construction of a railroad and telegraph line, thereby to secure the safe and speedy transportation of its mails, troops, munitions of war, and public stores; and the reasons, which induced it to grant lands absolutely for this national object, might well have led to the issue and absolute delivery of Bonds upon like terms for the same purpose. Hence, we must look to the terms of their issue and delivery as prescribed by the Act, to ascertain the obligations of the Company, for their proceeds were to be applied to a use in which the Government as well as the Company had a deep interest, and were in no just sense to be regarded as a mere loan of money or credit. The bonds were to be payable in 30 years, with interest semi-annually. Until their maturity, the Government would be under no obligation to pay any part of the principal thereof; and had these been simply loaned for a purpose in which the Government had no interest, no obligation by the Company to provide for any part of the principal until maturity, could have been implied. These were issued and delivered, however, to aid in the construction of a great public work; and in prescribing the conditions of such delivery to the Company, we find the Government exercising great caution; and to these conditions as expressed, we must look to ascertain the rights and obligations of the parties. It was impossible for either to foresee when the Company would be able to complete its road and be able to pay more than current expenses, until which time it was known to both that it could pay nothing on account of principal or interest; for it could not have been the intention

or for the interest of the Government that moneys procured from stock subscriptions, or from loans, should be applied to those purposes. It was, however, at first supposed that such moneys as might become due from the United States for services rendered by the Company could, without peril to the latter, be withheld from it, thus providing a fund applicable to the reimbursement to the Government of its payments of interest; and it was also quite clear that the application of five per cent. of net earnings to a like purpose, after the road should be completed, could result in no serious embarrassment. It could not be foreseen to what sums the Government would be annually entitled from these two sources long prior to the maturity of the bonds. They might greatly exceed the interest payable, and this at the time was anticipated, as appears from the language of the Act of 1862; but it could not have been supposed that for a considerable period after the payment of interest on the bonds first to be issued, any amounts whatever would be derived from either source. It is now, however, insisted by the Attorney General—and upon this alone his argument is based—that there was lurking under these express provisions of the Act an implied obligation resting upon the Company to reimburse immediately to the Government all sums it should pay for interest, and that this obligation at all times might have been and may be enforced against the Company by judicial proceedings. Let us suppose this to be done and judgment obtained and collected, and in what then is the situation of the parties under the contract? By its terms all moneys derivable from the two sources mentioned in the 6th section are to be applied to the payment of said bonds and interest until the whole amount is fully paid. Are they to be retained by the Government after it shall have been reimbursed in the manner supposed?

This would be monstrous injustice to the Company, for the Government would thus receive large sums far in advance of any payments by it to be made, and without obligation to allow even interest upon the fund thus to be accumulated. Is it possible, therefore, to give to the Act this construction? The argument is that by implication the Company is bound to the immediate reimbursement of all interest the Government may pay, to be enforced by action or set off, and still that it may retain and claim as defined by the 6th section. These double rights and remedies cannot co-exist The right expressed, is utterly inconsistent with that sought to be implied, and hence the latter cannot be invoked. If the parties had intended that all interest should be immediately reimbursed, the Act would have so declared. As the Attorney General would now have it construed, it should read that all interest paid by the Government upon bonds thus to be issued, shall be immediately reimbursed by the Company; failing to do which, the road and its equipments may be forfeited at the option of the Secretary of the Treasury, or he may enforce reimbursement by action. This is not the language of the Act, and could not have been within the contemplation of the parties. The amounts devoted by the 6th Section to the payment of principal and interest of the bonds, coupled with the lien they created, afforded all the security which the Government intended to acquire, and all, and indeed much more than the Company could possibly afford to grant.

If it be urged that if the Government was to be restricted to the two sources I have mentioned, it would in the early history of the road be compelled to pay large sums without immediate reimbursement, it may be answered that it was believed that long before the bonds should mature, the Government would be in receipt from these two sources of sums largely exceeding

all it should pay, and perhaps enough to satisfy in addition the principal of the bonds at maturity; and beyond all this, it might also be answered, that if principal and interest should not then be fully paid, the road, and all its rolling stock and equipments would be subject to be taken and forfeited to the Government by force of its lien; besides being subject to Government control, and prior forfeiture, if other and continuing conditions of the charter should not be complied with.

It is therefore respectfully submitted that by the express stipulations of the contract between the parties, as contained in the Act of 1862, it was agreed that to the two sources mentioned in the 6th section—and to those only—might the Government resort prior to maturity of said bonds, for the purpose of procuring funds with which to pay interest and principal thereof. If the Company was impliedly bound immediately to reimburse to the Government such interest as it might pay, it was wholly unnecessary to insert in the charter a provision that either of those two sources of revenue should be devoted to that purpose; for if this entire reimbursement could be thus enforced, the Government might retain and offset without any express agreement to that effect, sufficient to satisfy its demand, and if it might sue the Company and recover upon an implied promise as here insisted, it could enforce payment, not only of five per cent. of the net earnings, but of all; and could also collect the judgment it might obtain by a sale of any property of the Company. Moreover, if the latter was expressly or by implication bound to make this immediate reimbursement, it was subject, at the pleasure of the Secretary of the Treasury, to have its road and property forfeited in case of non-payment, a consequence which courts of justice will never permit, unless in a perfectly clear case. Here, it is sub-

mitted that the rights of the parties are clearly defined. The Government well knew that for a considerable period of time after it should commence paying interest on these bonds, the Company would be unable to reimburse it; and it also foresaw that long before the bonds should become payable the Company would doubtless be in a condition not only to pay interest in full from the two sources dedicated by the 6th section, but also that these would provide a constantly accumulating fund for the satisfaction of the principal. This fund would be in possession of the Government, and whilst no stipulation was made or required that interest upon this should be credited to the Company, there was a like absence of any express requirement upon the latter to allow interest upon any sums the Government should pay for interest upon the bonds. It might have been supposed the two accounts would balance each other; and there certainly was as much probability in favor of the one as of the other. In speculations like this, however, the Court will not indulge, for it is quite within the range of judicial power to settle the respective rights of the parties as to interest when the questions arise—which cannot be until after the maturity of the bonds.

II.—As before stated, it soon became apparent that the road could not be constructed without the aid of large sums beyond those derivable from the lands or bonds to be furnished by the Government, and thereupon the Act of 1864 was passed, containing the modifications to which I have referred. Among these, the most important were that authorizing the Company to issue and sell bonds, which should be a first lien, to an amount equal to those to be furnished by the Government; and, as it was essential both to the Govern-

ment and to the Company that the interest on these bonds should be promptly paid, which could only be done from current income, it was provided that the Government, in aid of this, should not only surrender its priority of lien, but should, as it did, agree that only one-half of the compensation for services rendered for it should be required to be applied to the payment of its bonds and interest. This promise, not to require such application of this one-half, was in effect an agreement to pay it over to the Company, that it might be the better able to meet and pay the interest upon the bonds it was authorized to issue; but it is nevertheless insisted by the learned Attorney-General that, by force of this lurking implication, the Company still remained liable to make immediate reimbursement to the Government of the entire interest it should pay; and that, notwithstanding its pledge not thus to apply the one-half, it might lawfully withhold it from the Company, and here in this Court require its application in precise violation of its pledge. It was with this extraordinary proposition that the Court dealt below; and it is now to be dealt with and finally disposed of here. The appellant insists that the agreement, not to require the application of this one-half to the payment of said bonds or interest, does not displace the implication relied upon, but that this remains in full vigor, to be enforced by the Court either by action or offset as here sought; and that the distinct pledge of the Government, not to require such application, does not prevent the Attorney-General from here asking it, nor the Court from judicially making it as requested. The morality, the honesty, of such a demand I shall not discuss; but shall proceed to present to the Court a few considerations in support of our proposition, that, by virtue of the provisions of the Acts of 1862 and 1864, the appellees are entitled to recover the amount

adjudged below, and that, therefore, the decree of the Court of Claims should be affirmed.

First.—I call attention to the very decisive acts and conduct of the Government affirming, in the most solemn manner, through a series of years, a construction of this contract in exact conformity with that now and at all times relied upon by the Company, and in direct hostility to that asserted by the appellant. Such conduct, such acts, so persisted in, are of great, if not controlling weight where language used in an agreement is indefinite or ambiguous; but here, where it is so plain as hardly to need interpretation, that given to it by the parties will be adopted.

There has never been a time when the payments by the Government for interest upon these bonds has not been largely in excess of any sums due the Company for transportation. If, therefore, the right to set off the one against the other, or to recover these sums paid for interest, exists now, it arose and existed upon payment by the Government of the first six months' interest due. But the Government for the period of six years never asserted such right, but, on the contrary, paid, upon the utmost deliberation, one-half the amounts due for transportation, as they severally accrued. At the end of the fourth year, the Secretary of the Treasury, acting upon a legal opinion of Mr. Ackerman, Attorney-General, declined for a brief season to pay upon this basis; but the United States, by its Act of Congress of March 3d, 1871, ordered the payment to be made in money, and this command the Secretary obeyed, and up to March 3, 1873, $2,357,459.67 was paid to the Company—running through a period of six years, in direct affirmance of our right to recover here, and in plain repudiation of the claim set up in the answer. Conduct—acts much less cogent than these—have been often held by courts of justice to fix unalterably the construction of ambiguous contracts. For the law on this subject the Court is referred to—

Chicago *v.* Sheldon, 9 Wallace, 50.
Stone *v.* Clark, 1 Metcalf, 381.
Livingston *v.* Ten Broeck, 16 J. R., 22.
R.R. Co. *v.* Trimble, 10 Wall, 377.
See also opinions of Attorney-General, (Taney) vol. 2, 558.

If it shall be suggested that these payments thus made were made by a department or agent of the United States, and therefore not binding upon the principal, the answer is that such duties can only be performed by authorized officials, whose acts, unless repudiated, are necessarily binding.

But the Treasury Department in making these payments acted not only in subjection to the requirements of the contract, but in harmony with the declared purpose of the parties in making it; for although what members of Congress may say in debate cannot be used in construing a statute or contract, yet where they, in debate, declare the meaning and effect of an Act whilst on its passage, and offer amendments for the purpose of radically changing it, and these are by the body rejected, it may be assumed that such body did not intend to frame the law or contract as it would have been with the amendment incorporated. Thus, if in the Senate and House of Representatives, whilst the Act of 1864 was under discussion, it was declared by members of those bodies that, if it passed as it finally did, interest paid by the Government would be irrecoverable until the maturity of the bonds, except to the extent it should be paid by the application of one-half the amount due for transportation and five per cent. of net profits—and this was not questioned—it would afford most persuasive evidence that it was not the intent of the United States to require any reimbursement of interest beyond that expressly provided for. And such debate and legislative action known to the company would naturally be accepted

as the true meaning of the contract by it to be adopted. That such debate and legislative action did occur on the passage of these Acts of 1862 and 1864, is clearly established by the report of the Judiciary Committee presented herewith, and by the debate which occurred in the House of Representatives, as appears from extracts appended to the argument of the late Judge Curtis.

These debates, this formal and solemn action of legislative bodies, were of course known to the Department, which for years paid these large sums to the Company; and they were also known to those who accepted these contracts and invested their means in the construction of this great national work.

Is it quite manly or honest now to turn upon them and say that those who framed this contract on the part of the United States, and induced, by their assertions and action, men to enter into it and to advance their money in an enterprise more likely to be immediately advantageous and profitable to the Government than to them, were grossly mistaken, and that the conduct of high officials who also acted upon these may now, after many years, be repudiated?

But we do not rest in this case upon the conduct or acquiescence of even the Secretary of the Treasury, for when that officer, on the ground stated, declined in January, 1871, to make the payment here claimed, the Government itself, by its supreme law-making power, took charge of the very question here raised, and it was considered in the Judiciary Committee of the Senate, as one of its members said, (*Congressional Globe*, p. 1775,) all winter, and finally, although Senator Thurman stated he did not approve of the Acts of 1862 and 1864, yet he, in common with a large majority of that committee, could not resist the conclusion that by their clear construction the Government must pay the one-half due the Company for transportation, and was not entitled to assert any claim to be reimbursed for interest

beyond what should be extinguished by the application of the other half and of the 5 per cent. upon the net earnings of the Company until the maturity of the bonds.

On this report, which was adopted, the Act of March 3d, 1871, was passed, expressly requiring the Secretary of the Treasury to pay the claim here sought to be recovered in money; and to that report and to the Act thus passed the Court is referred, as evidence not only that the agents of the Government had for years deliberately affirmed the construction of the contract now sought by the Company, but that the Government itself, a party to this contract, when its subordinates sought to change the interpretation so deliberately adopted, affirmed it in the most impressive manner, upon the gravest and most careful consideration. Under this rebuke and mandate the Treasury acted until the 3d of March, 1873, when, under some influence not necessary to state, the Act of that date was passed, not in any respect, even by inference, expressive of a legislative doubt as to the justice of the construction of the contract so long acted upon, but merely permitting the Secretary of the Treasury to retain the money here claimed until the questions involved could be judicially determined.

It is respectfully submitted that here the conduct of the Government has not been signalized by that liberality or fairness which citizens have a right to expect; and it may be further observed that as no condition of the contract has been lately newly discovered by it, the language and conclusion of the Supreme Court, as expressed in 9 Wallace, page 54, may be here adopted and judicially acted upon, that "the interest of each (party to a contract) generally leads "him to a construction most favorable to himself," and where "the language used by the parties is indefinite or "ambiguous, and hence of doubtful construction, the prac- "tical interpretation by the parties themselves is entitled to "great, if not controlling, weight, and where its execution "necessarily involves a practical construction, if the minds

"of both parties concur, there can be no great danger in "the adoption of it by the Court as the true one."

And it may also be added, as was said in Gilbert *v.* The United States, (1 Nott & Huntington, p. 28,) that a contract between an individual and the Government should be construed in the same manner as contracts between private parties.

I have thus far considered the effect due only to the action of the parties, and to their practical interpretation of the contract. If this is to be changed it must be by language so clear as to admit of no doubt; for upon the theory of ambiguity of language this practical construction is decisive. I shall hereafter, I think, be able to show that the very absence of ambiguity irresistibly led to the construction which the parties so long followed.

Second.—It will not, I suppose, be disputed that the contract now existing between the parties is to be found in the provisions of the Acts of 1862 and 1864, and that this contract is wholly unaffected by the Act of 1871 or of 1873. The Act of 1871 was designed to declare that by force of this contract the company was entitled to receive from the Government *in money*, and not by way of offset or otherwise, the one-half due for transportation, and that the Secretary of the Treausury must so pay it, whilst that of 1873 was intended merely to relieve the Secretary from that duty until the right of the Company to recover the same upon the law and the facts should be determined. This act did not attempt to define what those rights were, nor in any respect to modify or change them, nor had Congress rightful power so to do, or in any manner to declare to what relief either party was entitled. Their respective rights were left precisely as stipulated in the contract, nor could the effect of the conduct of the parties, so far as that was capable in law of interpreting it, be in any manner varied or impaired, nor was this attempted. The entire operation of the Act was to authorize the Secretary of the

Treasury to withhold payment as therein provided; for it may be suggested that authority for the company to sue the United States already existed, and unless they could, independently of the Act, interpose therein a claim by way of set-off, it is not perceived that the Act authorized a proceeding in that form.

The statute of 1864, on being accepted by the company, became incorporated into the contract of 1862, which was thus materially altered. Prior to 1864, as before stated, the managers of this great national work had ascertained that it was impossible to obtain the means necessary to accomplish it unless large sums in addition to those to be furnished by the Government could be obtained; and that they must also, in view of payments to be made for interest upon moneys thus to be obtained, be able to retain a part at least of the sums which would be earned for services to be performed for the Government. These two modifications of the agreement of 1862 were the principal ones asked for by the company, and these the Government granted, as expressed in the Act of 1864. By that Act the company was authorized to execute a first mortgage upon its road, &c., to secure bonds equal in amount to those to be furnished by the Government; and it was expressly declared that only one-half of the compensation for services rendered for the Government by the company should be required to be applied to the payment of the bonds issued by the Government in aid of the construction of the road. Reduced to plain English, the parties said this: By the contract of 1862 the Government may hold and apply to the payment of bonds and interest the whole compensation due for transportation, but as modified in 1864 only one-half that sum. It is not pretended—it never has been pretended—that the Government has or ever had a right to payment of the *bonds* until the maturity thereof, unless from one or both the sources I have mentioned sufficient should be received to more than reimburse it for the inter-

est it might pay. Any such excess would of course be applicable to the bonds, but it was, I suppose, the duty of the Government first to apply the compensation due for services and such moneys as it should receive on account of the five per cent. to the extinguishment of interest. Indeed, until it should pay the bonds it would have no claim thereupon against the Company, which, by Section 6 of the Act of 1862, was bound to pay them at maturity, and of course not until then. When, therefore, the Government modified the agreement of 1862 so that but one half the compensation for services should be required to be applied to the payment of the bonds and interest, it in substance agreed that it would not retain it for that purpose, and as it had no other claim whatever against the Company the real meaning of the modification was, that this one-half should be paid to it as it fell due. What person of ordinary intelligence can doubt this, or assert that it was not the solemn understanding between these parties that, as the Government had pledged itself not to require the application of this one-half in payment of bonds or interest, it also undertook to pay the same to the Company? And in the face of this understanding, who will pretend that it is nevertheless in harmony with the right and duty of the Government to ask this Court to make an application of this amount which it has promised not to require?

Third—Whilst all this very clearly shows that by the true construction of this contract and the intent and meaning of the parties thereto it was well understood that, by stipulating for the application of these two sources to the payment of bonds and interest, the parties agreed that such of the latter as should not be reimbursed thereby should remain unpaid, except at the pleasure of the Company, until the bonds matured, it is very manifest that the Government, without a clear violation of its agreement, cannot apply, or ask the court to apply, the amount the Company

here seeks to recover towards satisfying the claims set up in the answer.

At the time this agreement was modified, in 1864, it was of course, has heretofore stated, unknown to both parties what would be derived from either of the two sources I have mentioned applicable to the reinbursement of the interest in question. One half the sums earned by the Company and payable by the Government, coupled with the five per cent., might or might not within a few years be sufficient to pay this, and the parties might well have supposed that long before the bonds matured all interest paid by the Government would be reimbursed. And acting on that assumption and from other motives, and especially in view of the fact that without this and other changes in the contract the road could not be built, the Government might have been quite willing, and upon ample consideration to agree to pay, and to pay one-half the compensation here claimed instead of insisting upon the whole. Certain it is the one-half was agreed to be surrendered, and in such mode and form that an individual party to a contract would hardly dare urge that he could nevertheless, through the aid of a court of justice, get the exact relief which he had solemnly promised upon sufficient consideration not to require.

Another suggestion is entitled, as I think, to weight upon this branch of the case. It must be conceded, even on the theory of the counsel for the Government, that if the five per cent. which it is now seeking to recover from the Company in another jurisdiction, coupled with one-half the compensation stipulated to be applied, shall be sufficient to extinguish the interest paid, no other or greater sums could be demanded by the Government; and hence it may well be that, as the amount due on account of the five per cent. cannot be determined in this action, it was the intent and purpose of the Government not to emparrass the Company by two prosecutions for the same cause; for upon what ground can the Government here claim to recover a

personal judgment against the Company for the entire amount paid for interest, and in another jurisdiction seek a recovery on the same claim for the five per cent. to which, under the contract, it is entitled?

Fourth.—By the contract between the parties, distinctly apparent from its language, and by them most emphatically interpreted, the interest payable by the Government was not to be recoverable, except from the two sources mentioned, until the maturity of the bonds, when the Company was bound to pay the amount thereof, with all interest which should then have been paid by the United States, and not from the sources mentioned repaid; and to secure such payment by the Company the bonds were declared to constitute a lien upon its road and property, to enforce which the Government was authorized to resort to the most harsh and effective measures.

1st. It is hardly necessary to argue, what is quite apparent from the contract itself, that the Government was in no just sense a donor of these bonds. So far as is disclosed by the contract and by the history of the enterprise the Government was to be largely benefited by the construction, equipment, and operation of this road—more difficult of accomplishment, more hazardous to capital, than any public work ever before attempted, and not less beneficent in its purposes. Such a highway as this, and only such, would enable the Government to promote emigration and protect its people within this almost untrodden empire; and only this would give increased and ultimately untold value to its public lands. It was, as before stated, in the true sense a public work, and thus it was regarded, and capitalists were asked to assist in its construction upon the promise of such Government aid as would make their investments in the end profitable. Some wild, and, until the road should be built, almost worthless lands were given by it to the Company, but it was well known that every section thus donated was intended to increase the value of the adjoin-

ing one retained by the United States four-fold. The proposition, therefore, that the contract under which these bonds were delivered to the Company is to be construed most strongly against it, because it stood in the relation of donee to the Government, will not, it is believed, be adopted by the Court. On the countrary, it must be construed, in the main, as contracts usually are, except that in some respects, and especially in one, it would, if such construction were required, be construed, most strongly, against the Government. I here refer to the clause which declares the bonds to constitute a lien upon the road for the payment of the amount thereof with interest, and authorizes the Secretary of the Treasury in case of default to take possession thereof, and hold it to the use of the United States. This privilege, which, if adopted, would utterly destroy the value of the road to the stockholders, affords a strong presumption that it was not the understanding of the parties that the interest payable by the United States should, as soon as paid, be reimbursed by the Company—failure to do which would authorize the Government to take possession. In substance, though not technically perhaps, this would operate as a forfeiture; and as the Company was to have twelve years in which to complete its road, and as, until then, no one acquainted with the subject supposed the Company would be able to reimburse any considerable part of this interest, the road would have been liable in sections, and during the very infancy of the Company, to have been thus taken from its stock and bondholders.

2d. Let us now look somewhat closely at the provisions of the contract, and from them and them only, learn its true scope and meaning.

It should be constantly borne in mind that the Company was in no respect liable to pay the bonds or the interest due thereupon to the holders, and to get at its exact duty in reference thereto we must resort, not to any implied or un-

written obligation, but to the Acts of 1862 and 1864. In these we find the bonds and interest secured and means of payment from the two sources I have mentioned specifically pointed out. It is well settled that where provision is thus made in an agreement nothing inconsistent therewith upon the same subject is to be inferred, nor, indeed, in addition thereto, if it may be fairly presumed from the circumstances that no addition was intended. Apart from the inability of the Company to make such payment it is quite evident that the arrangement to pay five per cent. upon net profits annually on account of interest, payable every six months, is inconsistent with an implied promise to reimburse the whole of it as it should be paid by the Government. So too, an agreement that the entire sums earned by the Company for transportation might be retained and applied to this reimbursement is not consistent with an implied obligation to reimburse it in full whenever paid. Such express stipulations very clearly show that they, and they only, are to be regarded, and that in their presence, no implications on the same subject can be entertained.

In the language of the Judiciary Committee of the Senate, "had it been the intention of Congress to require the "Company to pay the interest as it should become due, the "Act would have read, said Company shall pay said bonds "at maturity, *and the interest thereon as it shall become due.*"

Report, page 3.

3d. As we approach the contract, as modified by the Act of 1864, all doubt, all ambiguity disappear. I have already stated the causes which led to this change. Capitalists declined to advance means upon a security subordinate to that held by the United States, and so it was agreed it should be made second, whilst one-half the sums to become due from the Government for transportation were to be paid over to the Company instead of being applied as agreed in 1862.

Now, let us suppose that when this right was surrendered the Government had said to the Company and to the capitalists about to advance their means with which to construct the road: "It is true the claim of the United "States to apply one-half the sums payable for transporta- "tion is given up. It is true also that we were never entitled "to apply this one-half except in reimbursement of inter- "est paid upon bonds, and it is also true that we have "apparently surrendered this right to enable the Company "the better to procure the capital needed to build the "road; but the Government intends notwithstanding to re- "fuse to pay over this one-half—designs to hold the same "as a means of exacting reimbursement of interest, and in "addition intends to claim its entire reimbursement the "moment it is paid, and upon default will take possession "of the road of the Company, and hold it to the use and "for the benefit of the United States." What would the Company, the capitalists about to loan money to it, have said upon hearing such an announcement? They would at least have had their eyes and ears opened to the purposes of the Government, as now asserted; but does any fair-minded, intelligent person suppose that the enterprise of building the road would have been entered upon or accomplished?

4th. It is difficult to understand what language of the contract can be relied upon to create an obligation on the part of the Company immediately to reimburse to the Government all sums it may pay for interest upon its bonds. It certainly cannot, with any force, be urged that this arises by implication merely, for the long-continued practical interpretation by the parties utterly repudiates such a suggestion. To raise the obligation here insisted upon, the construction adopted by the parties—so decisive as to be almost judicial—must be overturned, and one in utter hostility to it adjudged. Before so doing, this Court must find solid

ground on which to stand, and must unhesitatingly conconclude that the parties who for six years have, in the most deliberate manner, acted upon the theory that the Government had under the contract no right to the reimbursement as now claimed, were ignorant of their own purpose as therein expressed, and mistook their own meaning as therein written. No court will venture thus to adjudge upon mere implication, but will demand from the party who insists that, for six years, he has voluntarily paid moneys to the amount of millions under a mistaken construction of his own contract, very clear evidence of the truth of the improbable assertion. Where—in what portion of this contract is this evidence of delusion supposed to lurk?

It is said on the part of the Government that the delivery of these bonds to the Company was a loan of its credit, creating an implied obligation on the part of the borrower to provide funds to meet interest and principal as the same should fall due. That would be a very simple transaction, the parties to which would not be likely to misinterpret its meaning for a series of years. But this is not such a case. Here the Government was to afford aid in the construction of a road of great national importance, in the direction and management of which it was to participate, and from the working of which it was to secure untold benefits. It invited its citizens to assist in the enterprise, and undertook in various ways to encourage them so to do. One mode of encouragement was to issue these bonds, payable at the expiration of thirty years; and as the road, which might not be constructed under twelve years, would earn but little for a considerable period, the Government permitted the reimbursement to it of the interest it should pay from such portion of the earnings of the road as could be thus applied without crippling the enterprise; and the appropriation for this purpose was expressly provided for in the only agreement which created

any liability whatever on the part of the Company to provide payment for the amount of these bonds and interest. The parties have for six years acted upon the understanding that these appropriations, and these only, were applicable to the reimbursement of interest; and now we have the remarkable proposition stated, that when they entered into the contract both would have understood, had they been sufficiently intelligent, that they really intended—the one to give and the other to receive these bonds as a mere friendly loan of credit upon the implied agreement that the borrower should at all times provide for payment of interest as it became due, and for principal when the bonds should mature.

It has been suggested for the Government that the provisions of the contract which dedicate the two sources hereinbefore mentioned as a provision for the payment of interest and principal, were not intended as a substitute for this implied obligation, for the reason that they were intended to create a sinking fund for the ultimate payment of the bonds, upon the theory that, for aught Congress knew, the time might come when the sums derived from these sources would greatly exceed the interest payable by the Government, in which case the Company would be credited for the excess on account of its subsequently accruing liability. But does not this argument suggest, in the most forcible manner, an abundant reason why the former should have been quite willing to make such an agreement as, until lately, it supposed existed, relying upon these two sources for ultimate reimbursement of interest, and content, until sufficient should be thus received, to postpone all right to demand repayment? This understanding is in exact harmony with the conduct of the parties; it is in precise accordance with their practical construction of the contract, and certainly not in conflict with any known rule of judicial interpretation.

It was conceded by Counsel for the Government, in the Court below, that the amendatory section of the Act of 1864 affords more plausible and, perhaps, stronger argument in favor of the petitioner's construction than is found in that of 1862; but whilst attaching little weight to it, he suggested that a reason why only one-half was to be retained by the Act of 1864 is found in the fact that it authorized the Company to negotiate a mortgage of equal amount, and prior to that of the Government; and it was therefore thought but right to reduce this fund by one-half, the better to enable the Company to meet this new obligation. Doubtless this was a leading motive operating upon the parties; but how could the Company be better enabled to meet this new obligation or the interest accruing upon it, if, by the true intent and meaning of the contract, one-half thus agreed not to be retained on account of interest was nevertheless, by the Government, to be held and applied by way of set-off in reimbursement of that identical interest? Adopting this suggestion of the learned and able counsel as to the purpose of the alteration, is it not decisive against the construction insisted upon by the Government? Upon this theory the Company was under an implied personal obligation immediately to reimburse to the Government all interest payable upon its bonds. To this purpose the two sources of income mentioned were pledged. It was immaterial to the Company, if this absolute obligation existed, whether it should be satisfied from these two sources or otherwise; nor could it possibly gain anything by an arrangement which should enable it to receive one-half the amount due for transportation with one hand, if it must immediately redeliver it to the Government in reimbursement of interest paid with the other; nor would such an operation assist in better enabling the Company to provide for the new obligation it was authorized to make.

At every turn and corner of this contract we find it bristling with provisions—with implications—quite hostile to the construction here asked for by the Government, and in entire harmony with that put upon it by the parties. It is quite unnecessary, as well as unprofitable, to pursue into minute details an examination of these for the purpose of learning the intent of the parties to it. They have declared it, have acted upon it, and certainly the most learned, the most technical legal intelligence must fail in the attempt to overturn or even unsettle the construction thus adopted. In the language of the late Judge Nelson, in the case cited in 9th Wallace—a great magistrate, who possessed that remarkable common sense more rarely found, said Macaulay, than the faculty of writing good poetry—"Where the execution of an executory contract involves a "practical construction, if the minds of both parties con-"cur there can be no great danger in the adoption of it by "the Court as the true one."

To this case that conclusion is especially applicable.

5th. In closing my observations upon this point, I will state that by the amendment of the 6th Section of the Act of 1862, by the 5th Section of that of 1864, the contract promising the payment here asked reads substantially thus: that only one-half of all compensation for services rendered by the Company for the Government shall be required to be applied to the payment of said bonds and interest, and that the other half shall, as the same falls due, be paid to the Company; and by the Act of 1871, which is merely declamatory of the true construction of the prior Acts, the Secretary of the Treasury was directed to pay over the other half to said Company in money. Can this Court, by any fair reading of the contract, come to a different conclusion? If this be the promise of the Government, and its promise be binding upon it, the case is disposed of, for it necessarily follows if it has no right to

retain this one-half on account of interest, that amount is to be paid over to the Company—irrecoverable certainly for the purpose for which the Government was bound not to retain it. And this conclusion is very decisive, not only in view of the covenants the contract contains, but from the arguments of Judge Curtis and of the Judiciary Committee, preceded and followed by the action of Congress, all which fully expound the causes, motives, and considerations which led the Government to agree not to ask for any reimbursement of the interest it should pay, until the bonds should mature except that obtainable from the two sources referred to, which might or might not before that date satisfy the sums thus paid. If they should not, then, by the express terms of the agreement, the Government was to have a lien upon the road and all other property of the Company as security for payment at maturity of the bonds, and of all interest theretofore paid. Until then no personal obligation of payment as against the Company was to arise, and then, if not met, the Government had the right to take possession of the road and its appurtenances and apply them to the use and benefit of the United States.

I, therefore, respectfully submit that the judgment of the Court below should be affirmed.

E. W. STOUGHTON,
Of Counsel for Appellees.

To the Honorable The Committee on the Judiciary of the Senate of the United States.

The following argument concerning the legislation of Congress, contained in an act, "*To aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,*" approved July 1, 1862; and in *an act to amend the same*, approved July 2, 1864, is respectfully submitted by

B. R. CURTIS,
Of Counsel for the Union Pacific R. R.

The precise question which has been made by the action of the Treasury Department, and which has occasioned a necessity for legislative action, should first be clearly stated.

The sixth section of the original act provided that "*all* compensation for services rendered for the government, shall be applied to the payment of said bonds and interest until the whole amount is fully paid."

The fifth section of the act of amendment provided "*that only one half of the compensation for services rendered for the government shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of the said roads.*"

The Treasury Department insists that the government has the right to retain, not one half, but the whole of the compensation for services rendered for the government, and to apply the whole to reimburse the interest paid by the United States on bonds issued to this corporation in aid of the construction of its railroad and telegraph line.

The precise question, therefore, is, whether the whole compensation for governmental service may lawfully and justly be retained by the government, in accordance with the original act, or only one half of it, in accordance with the amended act.

If this question should be determined by allowing to each act its natural and obvious meaning and effect, there could not be any doubt what the answer must be.

In the original act, Congress thought fit to empower and require the executive to retain the whole of the compensation for these governmental services; in the later act of amendment, Congress thought fit, for reasons which will be alluded to hereafter, to empower and require a retention of only one half their amount, and of course the later act is to govern, and the executive department has power to retain only one half, and not the whole.

But it is understood that the Treasury Department rests its action, not on the authority to retain the compensation for services to the government, contained in the original act and the act of amendment, on which it certainly cannot stand, but on a wholly different ground. And this ground I propose first to state fairly and fully, and then to ask your consideration whether it has any real existence.

That ground I understand to be this: That the United States delivered to this corporation certain bonds of the United States bearing interest, payable semi-annually, to be used by the corporation to aid in obtaining means to construct its railroad and telegraph line; and that, out of this delivery of bonds, there arose an obligation of the corporation to save the United States harmless from the effect of the obligations contained in those bonds; that, consequently, whenever the United States paid any interest on those bonds, the corporation became thereby indebted to the United States for the amount so paid. And, if so, the United States can lawfully and justly retain any amount which it would otherwise owe to the corporation; not by virtue of the power of retention, granted by the original and amended act, but by reason of the general right of offset, which the government may justly claim and exercise when settling with those who have claims for services.

The existence of this right, and of the several grounds on which it is asserted, I now propose to examine.

It is manifest that this is not a question whether an ordinary claimant of compensation for services rendered to the United States must have the amount of his claim reduced by a deduction of what he owes to the United States. Before that question can be reached, there is much ground to be traversed.

Whether this railroad corporation is now a debtor to the United States, and whether the deduction claimed can be made consistently with that legislation of Congress which controls this particular case, are questions entirely aside from the general right of the government to make offsets as against its creditors; and these preliminary and controlling questions depend on the legislation of Congress contained in the two acts now under consideration.

If those two acts, when construed together, do not show the corporation to be *now the debtor of the United States*, then the ground assumed by the Treasury Department wholly fails.

If these two acts, when construed together, do show beyond all reasonable doubt, that whatever may be the general right of the government to retain its dues out of what it owes for services, *that general right was modified and restricted by Congress in this particular case*, then, even if the corporation be now the debtor of the United States, the right of retention claimed by the Treasury Department also fails.

The first question then is, whether this corporation is now the debtor of the United States for interest paid by the United States on bonds issued to the corporation to aid in the construction of its railroad and telegraph line.

It is manifest this question cannot be solved by reference only to the bonds themselves, and the fact that they were delivered to the corporation to be sold to raise money to construct this great public work.

The bonds themselves import no obligation direct or collateral of the corporation. They are simply bonds of the United States, for both principal and interest; and whether any, and what obligation of the corporation grew out of their reception and use, must necessarily depend on the stipulations and agree-

ments of the parties (the United States and the corporation), preceding or accompanying their reception and use.

These stipulations and agreements are *all* contained in the two acts of Congress now under consideration. If there can be found in these acts, when fairly construed, enough to require the corporation to save the United States harmless from the payment of interest on the bonds, or, what amounts to the same thing, to reimburse all such payments as soon as made, or to reimburse the same within some fixed time which is passed, then the corporation is now indebted to the United States; otherwise it is not.

So that upon this first question, the true inquiry is whether there can be found in these acts of Congress sufficient to show that it was intended by Congress and assented to by the corporation, that the corporation should save the United States harmless from the payment of interest, or should reimburse the United States either immediately, or in some fixed time, which is passed, for all such payments.

In construing these acts I suppose no one will doubt that all the surrounding circumstances, in the presence of which and with reference to which the acts were passed, should be taken into consideration, and allowed their due and proper weight; and this, whether these surrounding circumstances appear in the acts themselves, or are part of the known history of their subjects.

When the original act now under consideration was passed, a part of the territory of the United States lying on the borders of the Pacific Ocean, had been erected into States which had already become of great importance, and whose rapid prospective growth was foreseen. Between these States and the Missouri River there intervened about two thousand miles of unsettled, and yet inhospitable country, much of which was then a desert, then valueless, and whose prospective value depended on a railroad.

The duty of the United States to afford protection to the Pacific States, and to bind together these widely sundered parts of our common country, by the cheapest, easiest, and most rapid means of intercourse, was clear and imperative. There

could not be, and there was not any doubt that a railroad would not only enable the government to discharge these plain public duties, as they could not possibly be discharged by any other means, but that the existence of such a road would save millions of money to the United States, theretofore expended in imperfect methods of attempting, in some small degree, to perform those duties.

There was and there could be no doubt that the existence of such a road would add great amounts to the value of the public lands, then practically worthless, and render possible the settlement of the territory lying between the Missouri and the Sacramento, and thus increase the population, wealth and safety of the United States.

It is a well-known part of the political history of the country, that in the presence of these great facts, all parties, whatever may have been their previous opinions concerning the power of the general government to engage in internal improvements, united in declaring this to be a national work, in the prosecution of which the government of the United States might properly engage; and that the time, manner, and extent of doing so were merely questions of detail.

At the same time the undertaking was believed to be truly vast in its dimensions and in its difficulties. The road was to be 2,000 miles long. It was to be constructed, in great part, through a wilderness, inhabited only by roaming savages, often at war with the white race, and not likely to look on quietly while their hunting grounds were disturbed. Mountains as well as deserts were to be encountered and overcome; in short, it was not doubted that the successful accomplishment of such a work would demand an amount of enterprise, capital, skill and perseverance, such as had not been united in any voluntary work of a free people, within the known history of men.

Such were some of the prominent facts touching this subject, known to every intelligent man in the country, when Congress undertook to deal directly with it, and to do what was wisest and best to secure this great national work, whereby the government could perform its legitimate national functions, and discharge its imperative national obligations.

The United States did not engage in this grand enterprise of such importance to itself, and hold out inducements to private persons to engage in it, simply and solely as "donors" in relation to "donees." It had no legitimate power to do so. The governing opinion of people of the country which prompted and has sanctioned the action of Congress, in this behalf, had reference to the creation by the national power of a national work for national necessities. And though the particular terms and conditions, as well as the particular instrumentalities by which it was to be made successful, were to be arranged and fixed by Congress, yet the purpose and design of the work and the objects it was to accomplish were primarily and controllingly national, in the largest sense of that word; and any view of this legislation which does not completely comprehend these relations of the government of the United States to this national work, and to all the means, not only for its completion, but for its successful operation, is a narrow, false, and emphatically an unstatesmanlike view of the subject.

This was not an enterprise of private persons, having some local interests to be promoted by an act of incorporation; or of capitalists desiring a profitable investment in some work which might be of incidental advantage to the public.

In its origin, in its character, in its uses, it was unmistakably an enterprise of the government of the United States; and so far as individual citizens were induced to engage in it, they were induced by the government to engage in an enterprise of the government.

The particular means employed by Congress to induce individuals to engage in the work were not designed by Congress to change its character, or to place the government in the position of "donors." Congress originated the work. They did so in execution of their public duty. They did so to attain public ends of vast importance. The inducements they held out were inducements to engage in a great public enterprise, involving by reason of its magnitude, its untried obstacles and its final compensations even if successfully accomplished, such risks as capital is very slow to encounter, if it can be induced on any terms to encounter them at all. And it may be added,

such risks as the stock list before the late events shows, under the most favorable construction of the legislation of Congress, were imprudently undertaken.

To apply to this legislation rigid rules, drawn from the common law, concerning grants of the crown *ex mero motu*, or even the somewhat more liberal constructions of acts of legislatures granting special privileges in derogation from the common right of the citizen, would be grossly unjust.

But I wish to guard against misconstruction of my purpose, by saying that I ask for no loose interpretation of these laws. I desire to have them fairly viewed under the light in which they were passed. And when their just meaning and effect are thus ascertained, the corporation I represent must be bound by them. If that meaning and effect have been actually attributed to them by the Treasury department, it will be for Congress to decide whether they shall be changed. If, by reason of any real or supposed ambiguity, the Treasury department has not given effect to the will of Congress already declared, the public faith requires the interposition of Congress to cause its will to be respected.

I proceed, therefore, to present the views I have of the legislation of Congress bearing on the right of the Treasury department to retain the whole of the earnings of the railroad for services to the government, instead of one half of those earnings.

The best way to make those views known, which has occurred to me, is to state what seems to me to be the true interpretation of those parts of the acts of Congress which have reference to the claims of the United States and their security.

But before doing so I desire to submit, that independent of *some* provision in the acts of Congress, it cannot be truly affirmed that the United States has any claim to be paid for its bonds any more than for its lands. Looking to the character of the work, the relations of the United States to the enterprise, the great public interests contemplated as involved in its successful accomplishment, it cannot be affirmed that, *independent of some provisions and stipulations of the acts of Congress*, the one, any more than the other, was to be paid for to the government. In other words (and the suggestion is not intended to be pressed

any further than this), there is not anything *in the relations of the parties which of itself, and independent of some express language of Congress, constitutes a claim for reimbursement.*

There is to be no assumption made that the United States was simply "a donor"; or that the United States standing outside of this enterprise, and in the relation of a mere surety for the accommodation of the corporation, entered into certain obligations. It was not outside of the enterprise. It was its originator and promoter for its own important views and interests. It was not a mere surety. What it agreed to do was agreed to be done to advance and secure its own great public interests. There was no relation between the parties on which alone any obligation can be rested. All depends on the fair meaning of what has been expressly enacted, viewed in the light of the circumstances, motives and purposes which caused such enactments.

The motives and general purposes of the act are declared in its title. It is "an act to *aid* in the construction of a Railroad and Telegraph line from the Missouri River to the Pacific Ocean, and to *secure* to the government the use of the same for postal, military, and other pursoses;" and the eighteenth section of the original act contains these important words: "And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefit of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act." And the general question is, By what means did Congress intend to *aid* their construction and *secure* their use?

The general answer is, by means of a transfer to the corporation of some parts of the public lands, and of certain bonds of the United States bearing interest.

What were to be the obligations of the corporation respecting these bonds and their interest; or, to state the question with more precision, was the corporation to repay to the United

States the interest as well as the principal of these bonds, *and, if so, when?*

This inquiry *when* was the corporation to repay the interest, must find its answer in some one or more requirements of the act on that subject. What are those requirements?

It is clear the fifth section contains nothing which shows when the interest is to be repaid, "To secure the repayment to the United States AS HEREINAFTER PROVIDED, of the amount of the said bonds so issued and delivered to said company together with all interest thereon which shall have been paid by the United States." This shows that it is "hereinafter provided" when the interest as well as the principal shall be repaid to the United States. The same idea is repeated in this fifth section, —to redeem said bonds or any part of them (referring to the different periods of these issues) "*in accordance with the provisions of this act.*"

Now there are three things and three things only "hereinafter provided" respecting the subject *when* interest is to be paid by the company.

First. In section sixth. "That the grants aforesaid are made upon condition that said company *shall pay said bonds at maturity.*"

This condition either does or does not include an obligation to pay the interest on the bonds as well as the principal.

If it does not, then this clause of the act is not one of the things "hereinafter provided" respecting the payment of interest by the corporation; and we must look further to find *when* the interest is to be paid by the corporation.

On the other hand, if this condition does include the payment by the corporation of the interest, as well as the principal of the bonds, then the time of payment of the interest, so far as it is fixed by this condition, is the time of the maturity of the bonds.

I am not aware that any one has doubted that this condition does relate to and include the payment by the corporation of the interest as well as the principal of the bonds. It does not seem to have been doubted by any one that, if, at the maturity of the bonds, more or less interest should remain unpaid

by the corporation, the corporation could not fully perform this condition by paying, or offering to pay, the principal of the matured bonds, exclusive of the interest thereon. The purpose of the United States to be finally reimbursed for all their payments, made by reason of these bonds, is clearly expressed. The only question is, how and when? In taking security by way of mortgage under the fifth section, the "how" and the "when" are not defined, but are said to be "hereinafter provided."

In the front of the next section is a condition which requires the payment by the corporation of "said bonds;" not distinguishing between their principal and interest. I am unable to doubt that the condition includes, what it naturally and obviously means in this connection, the interest as well as the principal. And if it does, then *this condition, in and by itself*, does not require the corporation to pay the interest of the bonds before the maturity of the bonds; on the contrary, it postpones the payment of the interest until the maturity of the bonds.

But it has been suggested that the obligation to "pay said bonds at maturity," may not only include such interest as shall be unpaid at the maturity of the bonds, but another and wholly different obligation to pay each six months' interest on the bonds as the same shall become payable.

It is respectfully submitted that such an interpretation is warranted neither by the rules of law, nor by the words of the enactment; and that when they are viewed in the light of the purposes, motives and objects which caused and governed this legislation, such an interpretation must be rejected.

Let it be remembered that these words, "shall pay said bonds at maturity," are operative words in an *express condition inserted to defeat grants made for valuable considerations.* Such conditions are to be strictly construed. They are not to be enlarged at all by construction. Still less can a wholly different requirement, not naturally included in the terms of the condition, be superadded thereto by construction of law.

Now the event referred to by the act is the maturity of bonds, "payable in thirty years after date." To this one event, clearly described and alone designated, it is proposed to add by con-

struction, "*and each semi-annual payment of interest as the same shall become payable.*"

It is believed no court of law would give its sanction to such a plain, substantive and important enlargement of a condition to defeat a grant.

The words "pay said bonds at maturity," mean at their maturity. And how can it be maintained that bonds "payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually)," are at *their maturity* when the first six months' interest becomes payable. Violence must be done to the language of the act to extort from its plain words this meaning.

It has been suggested that these bonds, though not themselves at maturity till the expiration of thirty years, bear interest warrants, each of which is a separate contract which does come to maturity when the time arrives at which such warrant becomes payable.

The first answer to this is, that these bonds do not in fact bear any such interest warrants. And the second and decisive answer is, that even if they did, it is the maturity of the bonds and not the maturity of the interest warrants which is described in the condition. And when a condition to defeat grants made for valuable considerations designates failure to pay bonds at their maturity as a cause of forfeiture of such grants, the infliction of forfeiture for failure to pay some separate, independent and merely subsidiary obligations, and not the bonds themselves, would not be allowed by a court of law. And it would not be allowed because it would be deemed unjust and unfair that such language should be so construed.

When the object of this act, declared in its title, manifested in the act itself, and known to all men as part of the history of the country, and the necessities of the corporation which this act was providing for, are considered, such a construction becomes not merely unjust and unfair, but in conflict with the whole scheme and purposes of the act.

Let us distinctly understand what the asserted construction of this clause of the act is. It is this: that when the first six

months' interest should become payable on the first issue of bonds of the United States to be made on the completion of the first forty miles of road, all the grants made by the act should be subject to forfeiture if the corporation should fail to pay that six months' interest; and so from time to time thereafter until the entire road should be completed. And this is supposed to be one of the terms, which the United States in time of war, when its own national existence was in jeopardy, held out to private persons to induce them to embark their capital in a great national work, which if successfully accomplished must confer vast benefits on the United States, but might be of small or no profit to the individuals who should be bold enough to engage in it.

It is assumed that Congress passed an act "to aid in the construction" of this unprecedented public work, "and to secure to the government the use of the same," which purposely contained a provision whereby the executive government of the United States could keep its hand on the throat of the political being they created, and strangle it at any moment if it should fail to save the United States harmless to the last penny for money expended by the United States to aid in the prosecution of the work.

This was not the attitude of the government of the United States towards this national enterprise. It is no niggardly, grasping, and purely selfish spirit which this act displays. This was a public work. The United States was to have great advantages from its accomplishment and use. Congress were willing to incur their part of its risks. They proffered the bonds of the United States, payable at a distant day, when success or failure would be assured, not as snares or instruments of forfeiture, but as real and efficient help. And how could it have been imagined that these bonds would practically be such help, if the corporation was obliged, at the risk of the forfeiture of all grants, to provide means to pay the interest on all these helping bonds? Let us look at this matter with care and exactness, as it should be assumed Congress did look at it.

Whence were the means to be derived to build and finish the railroad and telegraph line, if the corporation should be held

from six months to six months to pay all interest on the bonds?

The corporation was to be organized when 2,000 shares should be subscribed for, and ten dollars a share paid in. The directors had authority to call for assessments so as to complete the road within twelve years, but they could call only on subscribers for the stock; and it needs no argument to show, what the event proved, that this resource would be little more than nominal when compared with the vast demands of the work. No sane man could have looked to the sales of lands which the corporation was from time to time to receive from the government, as available means of building the road, however valuable the road when built might render them in the lapse of time. And the act is so framed, that in point of fact the executive withheld the lands until the completion of the road. Nor could the earnings of this road, while being built through a wilderness, be expected to yield large profits.

Now, if the subsidies provided for are distributed over a period of twelve years, allowed for completing the road, it will be seen how great a deduction from their effective value to the corporation must be made if the corporation was placed under an absolute obligation to pay the interest on all bonds once in six months.

And I repeat the inquiry,—whence could Congress have anticipated the means were to be obtained to bear this heavy and constantly increasing burden? And, if Congress did anticipate that the corporation would from some unknown source draw these great supplies, and did intend to place the corporation under an obligation to pay all interest on the bonds every six months, as fast as it should become payable, why did not Congress say so in plain terms? Why was this vastly important obligation left to be inferred at all? or, if to be inferred, to be inferred from an obligation to pay *the bonds at their maturity?* this last obligation having about as much connection with the obligation said to be inferable from it, as a promise to pay a sum of money at the end of thirty years has with a promise to pay interest on it once in six months till the thirty years shall expire.

It has been already stated that there are three provisions of

this act, and three provisions only, which can answer to those words in the fifth section, "the repayment to the United States *as hereinafter provided*, of the amount of the said bonds so issued and delivered to the company, together with all interest thereon which shall have been paid by the United States." The question to be solved is what is "hereinafter provided" respecting the repayment to the United States of the interest of these bonds. The first of the clauses "hereinafter provided," in which the interest of the bonds as well as their principal is made a charge by way of condition on all the grants to the company, from the United States, has been above adverted to. It is contained in the words already quoted. "That the grants aforesaid are made upon condition that the said company shall pay said bonds at maturity."

And it is submitted that it has been shown that this first clause "hereinafter provided" does not require the company to repay to the United States the interest paid on the bonds before their maturity.

It remains to consider the other two clauses, wherein there is something "hereinafter provided" respecting the repayment of the interest as well as the principal of the bonds.

The second of those clauses is found in these words of the 6th section—"and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid."

The third of those clauses is found in the concluding words of the same section—"and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of the said road shall also be annually applied to the payment thereof."

These are the provisions and the only provisions which can be found in the act to satisfy the words of the fifth section, that the bonds and interest are to be repaid to the United States "as hereinafter provided."

I submit that the first provision which makes the company liable "to pay the bonds at maturity" has been shown to create no obligation to reimburse to the United States the interest on the bonds at the several times when the same should become payable.

As to these other clauses of the act, whereby the sums due to the company for services to the government were to be applied to the payment of the bonds and their interest, *and after the road should be completed* at least five per centum of its net earnings should be *annually* applied to the payment thereof, they not only fail to create, or tend to evidence an absolute and fixed obligation of the company to keep down the interest on the government bonds, but they indicate that no such obligation exists. Let it be remembered that thus far the act has not imposed on the corporation the obligation to keep down the interest; that it has only said that the interest as well as the principal are to be repaid to the United States "as hereinafter provided;" and that the first thing "hereinafter provided" is that the bonds are to be paid by the company "at maturity." And now, when we look at all else there is "hereinafter provided" respecting the payment by the company of the interest on the bonds, we find the act provides, not for an absolute obligation of the company to keep down the interest until the bonds come to maturity, but for two separate and distinct funds, out of which the interest is to be paid in advance of the maturity of the bonds; the first being all compensation for services rendered to the government at any time; and the second at least five per centum of the net earnings of the road after its completion.

Let it also be remembered that this act of Congress was not merely a law to be construed and administered by courts of justice. That it was in the nature of a proposal to private persons to embark their energies and capital in this great public enterprise; and then with what justice can it be insisted that either of these three provisions of the act gave notice that whoever should engage in this work, would enter on an enterprise aided by the government, by an advance of its bonds; but if there should be the smallest failure to keep down their interest, which the United States had engaged to pay, every grant, and all property acquired under it would be forfeited.

Whence were the citizens of the country to derive this information? Not from the fifth section, which says the interest is to be paid "as hereinafter provided." Not from that clause of

the sixth section, which requires the corporation to pay the bonds at maturity. And certainly not from the other clauses of that section, which provide special funds to which, and not to an absolute obligation of the corporation, the government was to look for its reimbursement of interest before the maturity of the bonds.

It is true the government might have first required an obligation of the company to keep down the interest, and then, as collateral thereto, have required certain funds to be provided out of which such principal obligation should be discharged. This might have been done. Whether it would have been accepted, if proposed, is another question. It was not proposed. There is not only wanting any such proposal of such principal obligation, but the provisions for these special funds, by which the interest was in part or in whole to be kept down before the maturity of the bonds are not provisions collateral to, or adapted to such supposed principal obligation.

Take the first of them, "and *all compensation* for services rendered for the government, shall be applied to the payment of said bonds and interest, until the whole amount is fully paid." What has this to do with a distinct obligation of the company to keep down the interest till the maturity of the bonds? It shows clearly enough that the government was to retain what the road might earn in its service; but it was to retain it not on account of a distinct obligation of the company to pay the interest from six months to six months, but by reason of the entire liability of the government,—a liability which could not result in a payment of the principal till the end of thirty years from the dates of the bonds. Surely this does not tend to show an obligation of the company from time to time to pay interest any more than principal before the maturity of the bonds.

Take the second provision—"and after said road is completed until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be *annually* applied to the payment thereof." How does this imply or even consist with an obligation of the corporation to pay the interest on the bonds every six months after they shall have been issued? Is it a collateral provision adapted to such an obligation?

Does it imply the existence of such an obligation? Rather, is it not the only fair and legitimate result of all these conditions and reservations, that at the maturity of the bonds the company was to save the United States harmless both from their principal and interest; that everything the company had or might acquire was pledged to the performance of this obligation; and that until the maturity of the bonds the United States were content to rely on the two special funds the act provides for, to reimburse the accruing interest, and if any surplus should exist it was to be applied to the payment of the principal of the bonds.

It is submitted this is the just and true effect of the law.

An argument in favor of this supposed obligation of the corporation to pay the interest on the bonds when and as it becomes payable, has been drawn from that part of the 5th section, which authorizes the Secretary of the Treasury to take possession of the road, with all the rights, functions, immunities, and appurtenances thereto belonging, and also all lands granted to the said company by the United States, which, at the time of the said default, shall remain in the ownership of the said company. The argument is, that all such lands which should remain unsold at the expiration of three years after the completion of the entire road, are, by the 3d section of the act, made subject to settlement and preëmption like other lands, at a price not exceeding one dollar and a quarter an acre; that this renders it probable that no great amount of these lands, perhaps none at all, would remain unsold at the maturity of the bonds, and therefore it is to be inferred Congress intended this security to be applicable to the payment of the interest.

It is respectfully submitted *this argument* is founded on mere conjecture.

It is a merely conjectural assertion to say that Congress would not have named the unsold lands if they had not been looked to as an *important* part of the security. Congress was describing everything important and unimportant, *all* rights, *all* immunities, *all* functions, *all* appurtenances, and why not mention *all unsold* lands, be they many or few? It is not perceived

the provision is encumbered by their mention, whether they should prove to be of great, or of little value.

And when this act was passed, who could predict that at the end of thirty years there would not remain unsold some parts of these grants, extending over two thousand miles in length, and including almost every conceivable variety of lands, and their locations? To base this vastly important obligation to repay the interest on the bonds as it should become payable by the United States, on such naked conjectures as these, seems even less admissible than to infer it from an obligation to pay the bonds at their maturity.

But it is further insisted, that if the right to retain earnings for services to the United States, and apply them to the principal and interest of the bonds, and the sinking-fund of five per cent. of the earnings of the road after its completion, are the only means reserved by the government for the payment of the interest before the maturity of the bonds, they are also the only resources from which the government can claim payment on and after the maturity of the bonds, and that it is incredible that Congress intended such a result. It is admitted that Congress did not intend such a result, and for this, among other reasons, because the act makes the issue of the bonds operate as a mortgage on the entire property of the corporation, and authorizes the Secretary of the Treasury to take possession of it for the use of the United States on default of the corporation to pay the bonds or any part of them. And what the government could have from the corporation, in case it failed to redeem the bonds of the government at their maturity, more than the corporation's all, is not perceived.

There is another consideration of great weight, in my apprehension, bearing on this question. Beyond all doubt the United States was, by force of the bonds themselves, to pay their interest semi-annually. If the companies were to reimburse these payments to the United States, *when* were they to reimburse them? Were they to put funds into the treasury in anticipation of the semi-annual payments of interest? Were they, in accordance with the amendment of the act which was offered by Mr. White in the House of Representatives, as here-

after stated, to do so within one month or any other fixed time after the United States should make the payments of interest? When *and how* were the companies to repay the interest to the United States so as to save a forfeiture of all their rights? The act answers only by saying as to *when*, at the maturity of the bonds and by means of services to the government five per cent. of the net earnings of the road.

Can it be admitted as conceivable, that if an absolute obligation of the company either to provide means of payment in advance, or to reimburse the payments in some fixed time, had been contemplated, not one word should have been said on the subject?

It is respecfully submitted, that if it was the intention of Congress to require the performance of this onerous duty, under penalty of forfeiture of all rights, it was due to its own sense of justice that in proposing to the citizens of the country the terms on which they were invited to engage in this great national work, there should have been no real ambiguity; that it was not a matter to be left to doubtful inferences, or obscure and questionable constructions; that, in the proposals held out by the government to induce the execution of this great work, the citizens of the country had just right to expect the utmost good faith on the part of the United States; and that, after the proposals of the United States have been acted on for years, and the work completed and put in successful operation, it is not consistent with the utmost good faith to start for the first time this question of the obligation of the corporation to pay the interest as it should accrue on the bonds of the United States.

It was found impossible to organize the corporation and begin the work under the original act of July 1, 1862. The work was too vast, its success too uncertain. Those disposed to engage in it made their difficulties known to Congress, and the more favorable modifications contained in the amended act of July 2, 1864, were again proposed. Thus modified, the proposal was accepted, and the work was begun, prosecuted, and finished within a period of time and in a manner which, it is not too much to say, has excited admiration, and has done much to

impress not only the people of the United States, but other nations, with a just sense of the tremendous energies of a free people, skilfully directed to the accomplishment of a vast national work.

During all this time the government has gone on paying the interest on its bonds, and deducting from the amounts due for governmental service one half, and applying it towards the reimbursement of those interest payments. And now, at the close of the year 1870, after the road has been in successful operation for years, the Secretary of the Treasury, for the first time, comes forward with a claim that it is for the corporation to pay the interest on the bonds of the United States as it becomes payable, not because Congress has said so, but because by an astute course of reasoning such an obligation, it is thought, may be inferred from the act. I do most respectfully deny the astuteness of the reasoning, and the correctness of the inference; and I venture to add, that if the reasoning were astute enough to lead to the inference, the reasoning and the inference have not that flavor of manliness, directness, and frankness to be expected from a great government when dealing with its citizens, to induce them to engage in an untried governmental enterprise.

I pass from this view of the original act, to say a few words concerning that clause of the amended act, which declares that "only one half of the compensation for services rendered for the government by said companies shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of said road."

I suppose there can be no doubt this clause was intended to modify and control that clause of the sixth section of the original act, which provided for the retention of the whole compensation for services rendered for the government. It is true, the amended act speaks only of applying these compensations to the payment of the bonds, while the original act says, in terms, "bonds and interest." But I suppose it will not be doubted that this clause in the amended act was inserted in favor of the companies, and to improve their condition, and at the same time to retain the rights of the United States, secured by the former act, modified only by the reduction of the whole of the compen-

sation for services to one half of it. If this be not so, then the amended act has fairly taken away all right of the United States to apply any part of this compensation to the interest of the bonds, and has enacted that only one half of it shall be applied to their principal. It cannot be supposed this was the just meaning of the amendment. That was simply and merely to change the right of retention of the whole into a right of retention of one half.

And this being so, the inquiry is respectfully submitted to the Committee, by what authority the Secretary of the Treasury can retain the whole of this compensation, when Congress expressly stipulated and agreed that only one half should be retained, and the first mortgagees, under the express authority of Congress, have advanced their money, relying on this stipulation. It is no answer to say the company ought to pay the interest, and is in arrears. This might be enough if Congress had not expressly agreed that these governmental earnings should be so applied only to the extent of one half; how, consistently with good faith, can the government retain and apply the whole? Does not the action of the secretary effectually repeal that clause of the act of amendment which promised the company that only one half should be retained?

It is believed that the views above expressed are in accordance with the entire congressional history of this subject. The committee is so familiar with that history, and all its parts are so accessible to them, that I do not deem it needful to do more than advert to a few points.

In the report made to the House of Representatives, April 13, 1860, by the late General Curtis, as chairman of the select committee on a Pacific Railroad, a plan similar to that enacted in the act of July 1, 1862, is developed in great detail. This report contains the clearest proof that this plan looked to services rendered to the government as the only fund to keep down the interest before maturity of the bonds and form a sinking-fund. Among other things it says (p. 17), "it is proposed to advance, as the work progresses, sixty millions in bonds, *which may be increased, by accruing interest over service as the work proceeds, to seventy millions.*"

When the law now in question was before the House of Representatives, Mr. White, of Indiana, offering an amendment to the section under discussion, said,—

"It will be observed, by reference to the section, that there is no provision in reference to the payment of the current interest. I therefore move to amend by adding to the section the following:

"*It is declared to be the true intent and meaning of this section*, that the current interest on said bonds shall be chargeable to said Company, to be by them reimbursed to the United States within one month after each semi-annual payment thereof by the United States; and a default therein shall subject the said Company to the same liability and forfeiture above provided for in case of the non-redemption of the bonds at their maturity."

"The section, as it now stands, does not make any provision for the payment of the current interest as it accrues semi-annually. It may or may not have been the intention of the committee that the interest should be paid by the Company. Probably it was, but if not, then this amendment, of course, will involve a principle which the committee have not sanctioned. If it was the intention of the Committee, and it is the intention of the Committee of the Whole, that the railroad Company shall pay the current interest, then, to avoid the difficulty and uncertainty which creditors will have, and to insure its prompt payment by the United States, this amendment provides that the government shall first pay it, and the company reimburse it to the United States within one month. Of course it will be a little gain to the company to the extent of the interest upon the interest. This is the only way the interest can be promptly secured to the creditors."

Mr. Campbell, after alluding to the cost of government transportation exceeding the interest on the bonds proposed to be issued, in closing his reply, said,—

"It is not supposed that, in the first instance, the company will reimburse the interest to the government. It will reimburse it in transportation; but, if the transportation does not meet the interest, *then the government is to have a mortgage on the*

entire road for the FULL *amount of principal and interest.* I hope, therefore, that the amendment will be voted down."

"Mr. White's amendment was rejected."

(Cong. Globe, Part 2, 1861–2, p. 1911.)

Congress was asked to make the law what the Secretary of the Treasury now says it is, and refused to do so.

I am aware that a court of law is not influenced in its construction of an act of Congress, by what is said by individual members in debate. But this refusal of the House of Representatives to have the bill so amended, is an act of the House itself, manifesting decisively that it was not their intention to impose on the Company an obligation to pay the interest before the maturity of the bonds.

I am also aware that an argument in favor of an absolute obligation of the company to keep down the interest has been derived from the fact that if the United States continued to pay the interest during thirty years, that interest will amount to a very large sum. This must be admitted. But in all fairness there should be taken along with this admission the other fact, that Congress expected the amounts due from the government for services and at least five per cent. of the net earnings of the road after its completion, would also amount to another very large sum—so large as to exceed the whole amount of interest paid by the United States, and leave a sinking-fund applicable to the payment of the bonds at their maturity. This last fact appears, not only from the Congressional history of the subject, but from this law itself, which expressly makes the compensation for services to the govermnent as well as the five per cent. of earnings applicable to *the principal of the bonds* as well as to their interest.

If it be said that Congress cannot be supposed to have agreed that the amount of the bonds should be greatly added to by their interest, it seems to me a sufficient reply that in point of fact it was not anticipated by Congress, when it passed the act of July 1, 1862, that there would be any such deficiency of the funds provided to keep down the interest, as would cause anything to be added to the principal. To refer to events which have happened long since the date of an act, the very contrary of which

events were anticipated by those who passed the law, does not seem to me a legitimate mode of interpreting it.

And if we are to enter the field of conjecture, it may perhaps be appropriately suggested, that he is more bold than wise who shall assert, that before these bonds shall come to maturity, the wants of the United States for the services of the Pacific Railroad shall not meet the expectations of those who enacted the law, and not only keep down the interest, but form a sinking-fund to meet the principal of the debt. To predicate anything on the narrow experience of two years in the life of such a nation as the United States, especially in reference to such a work extending across 2,000 miles of its unsettled territory and connecting two great oceans, would seem, just now, premature. And to rest upon any assumption concerning its ultimate agencies and effects, a denial of what would otherwise seem to be plain obligations of the government, it is respectfully submitted would be to rest that denial on what now appears to be an insufficient ground, and on what may hereafter appear to have been founded only on impatience and shortsightedness.

Boston, Dec. 28, 1870.

Concurring, as I do, entirely in the grounds on which the preceding argument of Judge Curtis rests, and in the results, I yet desire to add briefly my view of the legal effect of two of the provisions of the sixth section of the act of 1862.

The first of these provisions is as follows: "And all compensation for services rendered for the government, shall be applied to the payment of said bonds *and interest* until the whole amount is fully paid." It is to be noted that this clause *does not purport to provide for a case of default in payment by the company*, nor to be applicable if and when such default shall occur. As to the bonds, there could be no default until maturity, and if the purpose had been that the fund should only be applied on failure of the company to pay the interest, that purpose must have been in some manner indicated.

It is to be further noticed, that this provision for the security of the government is to take effect so soon as the road shall be used by it, and while the bonds are running to maturity. Although, doubtless, after such maturity, if the government should not resort to its mortgage security, the fund will be applicable alike to debt and interest, which would then all be due.

Looking, then, to the effect of this provision, prior to the maturity of the bonds, which alone is important in this discussion, it enacts that the sums due for services from the government shall, as fast as they accrue (there being no provision for accumulation), be applied to the payment of the semi-annual interest, and this absolutely, and not on the condition that the Company shall have failed to pay the same; and further, that any surplus which the clause anticipates may exist, shall constitute a sinking-fund to secure the payment of the bonds when they shall become due. If such be the just view of this provision, how can it be said that the Act contemplates the payment semi-annually of interest by the company, when at the same

time it provides for its absolute payment by sums earned for services to the government?

The other provision of the section which is deemed of importance, is found at its close: "And after said road is completed, until said bonds *and interest are paid* at least five per centum of the net earnings of said road shall be annually applied to the payment thereof."

This provision contemplates that from the time the road is finished (which is restricted to twelve years), until the maturity of the bonds, a portion of the income of the company shall be "*also*" applied to the payment of the bonds and interest. The application is to be made *annually*. Of course this application must be primarily to interest paid by the government, and thus due. The residue, as in the previous clause, is to be held as a sinking fund, for the payment of the bonds when they mature. After that maturity, the fund will be applicable alike to principal and interest.

The language of this clause would seem to place it beyond controversy, that it was not framed with the understanding that the Company were to pay semi-annually the interest paid by the government, and that the income of the road was to be used to make good any default or deficiency in such payment. If such had been the purpose, some indication of it would be found in the Act, and further *the income would have been required to be applied semi-annually, as the interest fell due*, and not annually.

The provision contemplates on its face that such semi-annual interest will not have been paid by the Company, and like the preceding clause, is designed to strengthen the security of the government for the ultimate payment of both principal and interest, by appropriating in advance a portion of the income of the road first, to the repayment of interest, and the surplus to a sinking-fund for the redemption of the bonds.

The general purpose of both these provisions of Section Sixth seems to have been to provide a further security for the payment of both bonds and interest, both of which, by the terms of the Act, are payable only at the maturity of the former, by appropriating in advance a fund derived as well from the earnings of the Company for services rendered the

government as from its other income, part of which should be applicable, as it accrued, to the extinguishment of the interest paid by the government, and the residue to the formation of a sinking-fund for the ultimate payment of the bonds at their maturity.

DECEMBER 29, 1870.

S. BARTLETT.

41st Congress, 3d Session. SENATE. Report No. 375.

IN THE SENATE OF THE UNITED STATES.

February 24, 1871.—Ordered to be printed.

Mr. Carpenter, from the Committee on the Judiciary, submitted the following

REPORT.

The Committee on the Judiciary, who were authorized by resolution of the Senate of December 9, 1870, *to inquire and report whether the railway companies which have received aid in bonds of the United States are lawfully bound to reimburse the United States for interest paid on such bonds before the maturity of the principal thereof, and, if so, what legislation, if any, is necessary to compel such reimbursement; and by resolution of February* 16, 1871, *were instructed to inquire and report as to the right of the Treasury Department to retain all the compensation for services rendered for the United States by the Union Pacific Railroad and its branches, to apply on the interest of the bonds issued by the United States to aid in the construction of said roads, respectfully report:*

The answer to be returned to these resolutions must be arrived at by construction of sections 5 and 6 of the act of Congress of July 1, 1862, and section 5 of the act of July 2, 1864.

By the fifth section of the former act it was provided that on the completion and equipment "of forty consecutive miles of said railroad and telegraph," in accordance with the provisions of the act, the Secretary of the Treasury should issue bonds of the United States of one thousand dollars each, *payable in thirty years after date*, bearing six per cent. interest, payable semi-annually, to the amount of sixteen of said bonds per mile for *such section* of *forty miles*; "and to secure the repayment to the United States, *as hereinafter provided*, of the amount of said bonds, * * * together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company *to redeem said bonds or any part of them*, when required so to do by the Secretary of the Treasury, *in accordance with the provisions of this act*, the said road, with all the rights, &c., may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States," &c.

This section declares that the delivery of the bonds to the company shall create a mortgage on the road, to secure repayment to the United States of the amount of said bonds, together with all interest thereon, which *shall have been paid by the United States*, not absolutely and in the ordinary course of business, but "*as hereinafter provided*;" and the section also provides that the Secretary of the Treasury may take posses-

sion of the mortgaged premises on the refusal of the company "*to redeem said bonds or any part of them*," "*in accordance with the provisions of this act.*" The phrase, "in accordance with the provisions of this act," manifestly applies to the redemption of the bonds by the company, and not to the taking of possession by the Secretary; because the act in other sections contains provisions relating to the redemption of the bonds, but contains no provision regulating the manner in which such possession shall be taken. But as this section neither provides for the manner in which principal and interest shall be paid, nor the manner in which said "bonds or any part of them" shall be redeemed, we must look elsewhere in the act for such provision. We find it in section 6, as follows:

SECTION 6. That the grants aforesaid [that is, the grant of lands and the grant of bonds] are made upon condition *that said company shall pay said bonds at maturity;* and shall keep said railroad and telegraph line in *repair and use;* and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any Department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid, * * *and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest, until the whole amount is fully paid.* Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, *at least five per cent. of the net earnings of said road shall be annually applied to the payment thereof.*

In other words, the preceding section, in saying that a mortgage shall be created to secure payment, "as hereinafter provided," and that the Secretary may seize the road if the company shall make default in redeeming "the bonds, or any part of them," "in accordance with the provisions of this act," refers to the sixth section, which declares when and how the payment, secured by the mortgage, shall be made, and how the bonds shall be redeemed. Turning to that section, we read as follows: (1.) "*Said company shall pay said bonds at maturity;*" that is, said company shall pay said bonds in *thirty years from their date;* because *then* the bonds mature. In common speech, and in legal language, a bond matures when the principal or some part of it falls due. A coupon bond is not matured, or past due, when its first coupon is due. A bond with overdue coupons attached, if the principal sum be not due, is still a negotiable instrument. And the statute of limitations does not begin to run even upon the first coupon until the bond itself—that is, the principal sum secured by the bond—becomes due. There is, therefore, no analogy between such a bond and a note or contract where the principal sum is payable by installments. (*City* vs. *Lamson*, 9 Wall., 477.)

When, therefore, an act of Congress refers to the maturity of a bond, it must be construed to mean the time when the principal sum secured by the bond falls due. This would be the legal effect of a collateral undertaking by A to pay to B the amount of C's bond, if C failed to pay it at its maturity. It could mean nothing else, because the bond does not mature until the principal sum falls due.

It is well settled, in regard to coupon bonds, that the bond itself secures the payment of both principal and interest according to the provisions of the bond. The coupon is a mere contrivance to furnish convenient evidence of the payment of interest on the bond, without marring the bond by indorsement of such payment. As between the United States and the holders of these bonds, the coupon may be held by one and the bond by another; the payment of the coupon satisfies the interest on the bond to that extent, and the holder of the coupon from a bond issued by a suable corporation may bring an action on the coupon itself.

In such case his declaration may count upon the coupon only, and he may recover, although he is not the holder of the bond itself. This is one of the anomalies brought into the law by this new class of securities. To quote from the case cited:

> The coupon is not an independent instrument, like a promissory note for a sum of money, but is given for interest thereafter to become due upon the bond; which interest is parcel of the bond, and partakes of its nature; and the bond, being of a higher security than a simple contract debt, is not barred by lapse of time short of twenty years; and, as we have seen, this contemporaneous coupon does not operate as an extinguishment of the interest, unless there has been an express agreement to that effect. These coupons are, substantially, but copies from the body of the bond in respect to the interest, and, as is well known, are given to the holder of the bond for the purpose, first, of enabling him to collect the interest at the time and place mentioned without the trouble of presenting the bond every time it becomes due; and, second, to enable the holder to realize the interest due, or to become due, by negotiating the coupons to the bearer in business transactions, on whom the duty of collecting them devolves. This device affords great convenience to all persons dealing in these securities; especially to the holders in foreign countries, who otherwise would be obliged to forward the bond to the place of payment of the interest each time it became due, or trust them to the hands of their correspondents in the country where the payment is made.

What is true of a coupon bond would be true of a registered bond, as the bonds issued in aid of this road are understood to have been.

Therefore the provision, "said company shall pay said bonds," binds the company to pay not only the principal sum, but the interest thereon. But when is the company to make this payment of principal and interest? By the express language before quoted from the act, "said company shall pay said bonds *at maturity*." That is, at the maturity of the bonds the company shall pay all that the bonds call for; or, in yet other words, in thirty years from the date of the bonds the company shall pay to the United States the principal and interest represented by the bonds. Had it been the intention of Congress to require the company to pay the interest as it should become due, the act should have read, "said company shall pay said bonds at maturity, *and the interest thereon as it shall become due*."

It may be said that the company being required to pay the bonds at maturity, and the bonds themselves calling for payment of interest, the bond must be considered to be matured to the extent of the coupon past due. But this has before been shown to be unsound. If, when a year's interest falls due, the bond could be considered as matured *pro tanto*, then, of course, the statute of limitations would commence running upon the bond in so far as it represents such interest, which, as already seen, is not the case. The word "maturity" relates only to the principal sum. This is the law even in relation to promissory notes. A note payable in twenty years, with interest payable annually, is not barred by the statute of limitations as to any part of the interest until six years after the principal sum falls due.

This view is consistent with, if not strengthened by, the phraseology of the fifth section, which creates a mortgage to secure the repayment of the bonds, "together with all interest thereon *which shall have been paid* by the United States." *Which shall have been paid—when?* Manifestly at the time when the company is compelled to pay the bonds. Had it been intended to compel the company to pay the interest on the bonds as it should become due, the most natural phraseology to express that intention would have been this: "The mortgage shall secure the repayment of said bonds, together with all interest thereon, *as the same shall become due*." But the phrase is, "together with all interest thereon *which shall have been paid by the United States*," which seems to imply that the United States were first to pay the interest, as they were bound

to by their bonds, and that the company must repay it at the maturity of the bonds.

The judicial courts in deciding causes between private parties involving the construction of a statute expressed in language so plain as to leave no room for doubt as to its meaning, will not look to extrinsic facts or circumstances to enlarge or restrict such statute. In other words, the court will not go outside the statute to *raise a doubt*, but will simply obey the law. (*Eldridge* vs. *Williams*, 3 *How.*, 1.)

It is questionable, however, whether, in a case like this, where the Government, by its legislation, has encouraged the investment of capital in a work of national importance, it would be quite honest, or becoming the dignity of the Government, to shelter itself behind this technical rule of judicial construction. The stockholders of this company might well say that they understood these acts as they were understood by the two Houses of Congress, at the time of their passage. It would be rather harsh treatment to twist out of these acts, by refinement of criticism, a construction unfavorable to the company, and directly opposed to what everybody in Congress and out of it understood to be their meaning at the time they were passed and the money invested. But, however this may be, there is ambiguity enough surrounding this act to take it out of the judicial rule before mentioned, and to place it in that class of cases as to which even the judicial courts seek the aid of extraneous circumstances.

The act is very carelessly drawn. By a literal construction the Government was only bound to issue its bonds for one section of forty consecutive miles. The fourth section, embodying the grant of lands, provides how patents shall be issued for the first section of forty miles, and then adds:

"And patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners."

But this most important provision is wholly omitted in the fifth section, which provides for the issue of bonds to the company, as follows: "That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said road and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of $1,000 each, * * to the amount of sixteen of said bonds per mile for such section of forty miles." And there the provision stops, without authorizing an issue of bonds on the completion of any other section of said road. A strict construction of this act, and one far more reasonable than that which the Secretary of the Treasury now gives to the law in relation to services performed by the company for the Government, would make it difficult to justify that Department for having delivered bonds to the company, except for one section of forty miles, without resorting to other acts, which have probably cured this defect in the first act.

Assuming, then, that it is proper in this case to search for the meaning of this act outside its language, the proceedings in Congress will be found entirely conclusive. While the bill was before the Senate, Mr. Collamer, who had evidently scanned it with a professional eye, and whose opinion upon the proper construction of an act is respectable authority, moved to strike out in the 5th section the words "as hereinafter provided," and also the words "when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act;" and in support of his amendment, which probably would have made the bill

what it is now claimed to be, a bill imposing an absolute obligation upon the company to pay the principal of these bonds, and the interest as it accrued in money, he said:

> This bill carries the idea, and in this section provides for the repayment of this loan, as gentlemen call it. In a subsequent section it is *provided that the payment shall be made in the carrying of the mails, supplies, and military stores for the Government at fair prices, and also that five per cent. of the net proceeds or gains shall be set apart for the Government.* THAT IS ALL THE PROVISION THERE IS IN THE BILL FOR THE PAYMENT. There is a security attempted to be given in this section. It provides, beginning at the 13th line: "And to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds, so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, there shall be a lien on the line of the road." The language is "*as hereinafter provided.*" *The only provision is setting apart five per cent. of the net proceeds.* So that if you leave in these words, you have really nothing as a security for your bonds unless you get your pay in the carrying of the mails, &c., and if you do not get that service it goes for nothing. *The repayment is to be as "hereinafter provided," and the subsequent provision is for carrying the mails and Government supplies.*
>
> Then, in the next clause of the section it is provided: "And on the refusal or failure of said company to redeem said bonds, or any part of them, when required to do so by the Secretary of the Treasury, *in accordance with the provisions of this act*, the said road shall be forfeited;" that is to say, if they do not carry the Government freight and set apart the five per cent., then, indeed, you may take the road when it is ascertained not to be good for anything. But there is no provision here that you shall have your bonds repaid if the road goes into successful operation. There is no provision that the Government shall ever have pay in any other way than by carrying its freight and mails, and the five per cent. of the net proceeds. Now, this should be what it purports to be: a security for the repayment of the loan if the roads shall be a successful operation. I want no duplicity about it. My motion is to strike out, in the 14th line of the section, the words "as hereinafter provided," and in the 24th, 25th, and 26th lines, the words "when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act." (*Congressional Globe*, *June* 19, 1862, *p.* 2813.)

This amendment was agreed to. But Mr. Wilson, of Massachusetts, subsequently moved to reconsider the vote by which these amendments to the bill were made, and the whole subject was again discussed. Mr. Collamer maintained the necessity of his amendments, while other Senators maintained that the amendments would defeat the building of the road. On the 20th of June the Senate resumed the consideration of Mr. Wilson's motion, and it was agreed to; after which Mr. Collamer withdrew his amendments, and Mr. Clark, of New Hampshire, offered an amendment which was agreed to, so that the bill should read in the sixth section, "that the grants aforesaid are made upon condition that said company shall pay said bonds at maturity." Prior to this amendment the section read as follows: "that the grants aforesaid are made upon condition that said company shall keep said railroad and telegraph line in repair and use," &c.

As the section originally read, it was agreed on all hands that the company was not bound to pay either principal or interest of these bonds, except in carrying the mails, &c., and the application of five per cent. of net proceeds. The amendment proposed by Mr. Clark was to insert after the word "company" the words "shall pay said bonds at maturity," and this was the only change effected in the obligation of the company. Before this amendment the bill did not require the company ever to pay anything, except by services and the five per cent. provided for by the sixth section. After the amendment the company was bound to pay the bonds at maturity.

The debates in the House are equally instructive; and it is apparent that the company was not expected to pay the interest as it should become due. It was, indeed, more than hinted that the company never would pay anything. Mr. Thaddeus Stevens vindicated the building of the road by the Government upon the ground of its great national im-

THE UNION PACIFIC RAILROAD COMPANY

vs.

THE UNITED STATES.

COPY OF ALL THE SECTIONS of the Statutes of 1862, 1864, 1871, and 1873, which bear upon the subject in controversy.

EDWARDS PIERREPONT,
Attorney-General.

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ACT OF 1862.

AN ACT to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes.—(*Stats. at Large, vol.* 12, *p.* 490.)

SEC. 1. Walter S. Burgess, Benjamin H. Cheever, Ben. Halliday, and others, * * * and all persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic in deed and in law, by the name, style, and title of "The Union Pacific Railroad Company;" and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and

have a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said company shall consist of one hundred thousand shares of one thousand dollars each, which shall be subscribed for and held in not more than two hundred shares by any one person, and shall be transferable in such manner as the by-laws of said corporation shall provide.

* * * The secretary and treasurer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the directors. Annual meetings of the stockholders of the said corporation, for the choice of officers (when they are to be chosen) and for the transaction of annual business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

Sec 2

SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands, adjacent to the line of said road, earth,

stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine-shops, switches, side-tracks, turn-tables, and water-stations. The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made.

Sec 3

SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided*, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

Sec 4

SEC. 4. *And be it further enacted*, That whenever said company shall have completed forty consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed, in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which oath shall be taken before a judge of a court of record.

Sec 5

SEC. 5. *And be it further enacted*, That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, (said interest payable semi-annually,) which interest may be paid in United States Treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile FOR SUCH SECTION OF FORTY MILES; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, *the issue of said bonds and delivery to the company shall* IPSO FACTO *constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued;* and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the

use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

Sec 6

SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall *pay said bonds at maturity*, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid, (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service;) *and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid.* Said company may also pay the United States, wholly or in part in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par; *and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.*

Sec 7

SEC. 7. *And be it further enacted*, That said company shall *file their assent to this act*, under the seal of said company, in the Department of the Interior, *within one year* after the passage of this act, and shall complete said railroad and telegraph from the point of beginning as herein provided to the western boundary of Nevada Territory, before the first day of July, one thousand eight hundred and seventy-four.

SEC. 8. *And be it further enacted*, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route, through the Territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

SEC. 9. *And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line, from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri River to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas Railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas River, as aforesaid, and the afore-

said point, on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas, west of the meridian of Fort Riley, to the aforesaid point, on the one hundredth meridian of longitude, to be subject to the approval of the President of the United States, and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, in the Territory of Nebraska. The Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento River, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first-mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this act in the Department of the Interior within six months after the passage of this act.

Sec 10

SEC. 10. *And be it further enacted*, That the said company chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas River as aforesaid, within two years after filing their assent to the conditions of this

act, as herein provided, and one hundred miles per year thereafter, until the whole is completed; and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within two years after filing their assent to the provisions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed; and after completing their roads, respectively, said companies, or either of them, may unite upon equal terms with the first-named company in constructing so much of said railroad and telegraph-line and branch railroads and telegraph-lines in this act hereinafter mentioned, through the Territories from the State of California to the Missouri River, as shall then remain to be constructed, on the same terms and conditions as provided in this act in relation to the said Union Pacific Railroad Company. And the Hanibal and St. Joseph Railroad, the Pacific Railroad Company of Missouri, and the first-named company, or either of them, on filing their assent to this act, as aforesaid, may unite upon equal terms, under this act, with the said Kansas company in constructing said railroad and telegraph to said meridian of longitude, with the consent of the said State of Kansas; and in case said first-named company shall complete their line to the eastern boundary of California before it is completed across said State by the Central Pacific Railroad Company of California, said first-named company is hereby authorized to continue in constructing the same through California, with the consent of said State, upon the terms mentioned in this act, until said roads shall meet and connect and the whole line of said railroad and telegraph is completed; and the Central Pacific Railroad Company of California, after completing its road across

said State, is authorized to continue the construction of said railroad and telegraph through the Territories of the United States to the Missouri River, including the branch roads specified in this act, upon the routes hereinbefore and hereinafter indicated, on the terms and conditions provided in this act in relation to the said Union Pacific Railroad Company, until said roads shall meet and connect, and the whole line of said railroad and branches and telegraph is completed.

SEC. 11. *And be it further enacted*, That for three hundred miles of said road most mountainous and difficult of construction, to wit: one hundred and fifty miles westwardly from the eastern base of the Rocky Mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada Mountains, said points to be fixed by the President of the United States, *the bonds to be issued to aid in the construction thereof shall be treble* the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed; and between the sections last named, of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof *shall be double the number per mile first mentioned*, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed: *Provided*, That no more than FIFTY THOUSAND of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph.

Sec 12

SEC. 12. *And be it further enacted*, That whenever the route of said railroad shall cross the boundary of any State or Territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location; the companies named in each State and Territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point, on the one hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named company, at cost, over that portion of the roads of said companies constructed under the provisions of this act.

Sec 13

SEC. 13. *And be it further enacted*, That the Hannibal and Saint Joseph Railroad Company of Missouri may

extend its roads from Saint Joseph, via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions, in all respects, for one hundred miles in length next to the Missouri River, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the legislature of Kansas: *Provided*, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route west from St. Joseph, Mo., so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk road at said point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas.

See 14

SEC. 14. *And be it further enacted*, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of

Iowa, upon the same terms and conditions, in all respects, as are contained in this act for the construction of the said railroad and telegraph first mentioned; and the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for, in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter, until the whole is completed: *Provided*, That a failure upon the part of said company to make said connection in the time aforesaid and to perform the obligations imposed on said company by this section and to operate said road in the same manner as the main line shall be operated, shall forfeit to the Government of the United States all the rights, privileges, and franchises granted to and conferred upon said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company

shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned.

Sec 15

SEC. 15. *And be it further enacted*, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto.

Sec 16

SEC. 16. *And be it further enacted*, That at any time after the passage of this act all of the railroad companies named herein, and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing shall be filed in the Department of the Interior, and such consolidated company shall thereafter proceed to construct said railroad and branches and telegraph line upon the terms and conditions provided in this act.

Sec 17

SEC. 17. *And be it further enacted*, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same, for an unreasonable time, to remain unfinished, or out of repair, and unfit for use, Congress may pass any act to insure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and

telegraph line to be thereafter devoted to the use of the United States, to repay all such expenditures caused by the default and neglect of such company or companies: *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine-shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: *Provided*, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada Mountain, there shall be reserved of each part and installment twenty-five per centum, to be and remain in the United States Treasury, undelivered, until said road and all parts thereof provided for in this act are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each installment fifteen per centum, to be and remain in the Treasury until the whole of the road provided for in this act is fully completed; and if the said road or any part thereof shall fail of completion at the time limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

SEC. 18. *And be it further enacted*, That whenever it

See 18

appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, *Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.*

See 18

ACT OF 1864.

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred sixty-two.—(*Stat. at Large, vol.* 13, *p.* 356.)

See 4

SEC. 4. *And be it further enacted,* That section three of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten;" and by striking out the word "ten," where the same occurs in said section, and by inserting in lieu thereof the word "twenty." And section seven of said act is hereby amended by striking out the word "fifteen," where the

same occurs in said section, and inserting in lieu thereof the word "twenty-five." And the term "mineral land," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp-land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any bona fide settler, or any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner, or agriculturalist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land-Office, in conformity with the provisions of the preëmption laws: *Provided*, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturalist, and such quantity for each settler who claims as a miner, as the said Commissioner may establish by general regulation: *Provided, also*, That the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the centre line of any one of said roads or branches mentioned in said act, or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located or selected to be located, under the provisions of an act entitled "an act donating lands to the several States and Territories which may provide colleges for

the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and notice thereof given at the proper land-office.

SEC. 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be, and the same is hereby, extended one year from the time in said act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each year thereafter, and the whole to the State line within four years, and that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads.

SEC. 6. *And be it further enacted*, That the proviso to section four of said act is hereby modified as follows, viz: And the President of the United States is hereby authorized, at any time after the passage of this act, to appoint for each and every of said roads three commissioners, as provided for in the act to which this is amendatory; and the verified statement of the president of the California company, required by section four, shall be filed in the office of the United States surveyor-general for the State of California, instead of being presented to the President of the United States; and the said surveyor-general shall thereupon notify the said commissioners of the filing of such statement, and the said commissioners shall thereupon proceed to examine the portion of said railroad and telegraph line so completed, and make their report thereon to the President of

the United States, as provided by the act of which this amendatory. And such statement may be filed, and such railroad and telegraph line be examined and reported on, by the said commissioners, and the requisite amount of bonds may be issued and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory, upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of which this is amendatory is hereby amended by inserting, after the words "United States," in the last clause, the words "and States intervening."

Sec 7

SEC. 7. *And be it further enacted*, That so much of section seventeen of said act as provides for a reservation by the Government of a portion of the bonds to be issued to aid in the construction of the said railroads is hereby repealed. And the failure of any one company to comply fully with the conditions and requirements of this act, and the act to which this is amendatory, shall not work a forfeiture of the rights, privileges, or franchise of any other company or companies that shall have complied with the same.

Sec 8

SEC. 8. *And be it further enacted*, That for the purpose of facilitating the work on said railroad, and of enabling the said company, as early as practicable, to commence the grading of said railroad in the region of the mountains between the eastern base of the Rocky Mountains and the western base of the Sierra Nevada Mountains, so that the same may be finally completed within the

time required by law, it is hereby provided that whenever the chief engineer of the said company, and said commissioners, shall certify that a certain proportion of the work required *required* to prepare the road for the superstructure on any such section of twenty miles is done, (which said certificate shall be duly verified,) the Secretary of the Treasury is hereby authorized and required, upon the delivery of such certificate, to issue to said company a proportion of said bonds, not exceeding two-thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section is fully completed and certified by the commissioners appointed by the President, according to the terms and provisions of the said act; and no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point of beginning on the one hundredth meridian of longitude.

See 10

SEC. 10. *And be it further enacted*, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, *may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the*

bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches, and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States. And said section is further amended by striking out the word "forty," and inserting in lieu thereof the words "on each and every section of not less than twenty."

ACT OF MARCH 3, 1871.

Statutes, Vol. 16, Section 9, page 525.

See 9

SEC. 9. That, in accordance with the fifth section of the act approved July two, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," the Secretary of the Treasury is hereby directed to pay over in money to the Pacific Railroad Companies mentioned in said act, and performing services for the United States, one-half of the compensation at the rate provided by law for such services, heretofore or hereafter rendered: *Provided, That this section shall not be construed to affect the legal rights of the Government or the obligations of the companies, except as herein specifically provided.*

ACT OF MARCH 3, 1873.

Statutes, Vol. 17, Section 2, page 508.

Sec 2

SEC. 2. That the Secretary of the Treasury is *directed to withhold all payments* to any railroad company and its assigns, on account of freights or transportation, over their respective roads, of any kind, *to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed*, together with the five per cent. of net earnings due and unapplied as provided by law; and any such company may bring suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon *the law* and *the facts* of the case *shall be determined*, and also the *rights* of the United States *upon the merits of all the points presented* by it in answer thereto by them, and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business.

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12. St h 489
13 " h 356
17 " h 508

